

ATTORNEY GENERAL OF THE STATE OF NEW YORK
CHARITIES BUREAU

In the Matter of the

Investigation by LETITIA JAMES,
Attorney General of the State of New York, of the

Roman Catholic Diocese of Brooklyn.

Assurance No.#24-043

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG” or “Attorney General”) has conducted an investigation (“Investigation”¹) of The Roman Catholic Diocese of Brooklyn, New York (“Diocese,” and together with the OAG, the “Parties”) pursuant to Section 8-1.4 of the Estates, Powers and Trusts Law (“EPTL”) and Section 112 of the Not-For-Profit Corporation Law (“N-PCL”) to determine whether a proceeding or action should be instituted against the Diocese for failing to secure the proper administration of the charitable assets entrusted to its care in connection with its response to allegations of sexual abuse (“Abuse”) and other Improper Conduct² involving minors and Vulnerable Persons³ made against members of the

¹ All capitalized terms have the definitions provided herein.

² The term “Improper Conduct” means conduct that does not constitute Abuse but that nonetheless violates the provisions of the Diocese’s Codes of Conduct (as revised in accordance with the requirements of this Assurance of Discontinuance), which are intended to prevent improper sexual touching, sexual activity, or display or creation of pornography involving a minor or a non-consenting adult.

³ The terms “Vulnerable Person” and “Vulnerable Persons,” as used herein, are understood to be coextensive with individuals other than minors protected by the Charter for the Protection of Children and Young People, *i.e.*, “a person who habitually lacks the use of reason,” which is determined on a case-by-case basis. (Charter n.1.)

Clergy⁴ (the “Allegations”). The Diocese and its leaders, including Bishop Nicholas DiMarzio and Bishop Robert J. Brennan, have fully cooperated with the Investigation and, both prior to and after its commencement, have voluntarily undertaken a number of important changes to the Diocese’s policies and procedures to help address the concerns that led to the Investigation and to prevent their recurrence.

This Assurance of Discontinuance (“Assurance” or “AOD”) contains certain conclusions of the Investigation by the OAG, as well as changes and enhancements to the Diocese’s Policies⁵ agreed to voluntarily by the OAG and the Diocese.

The Diocese does not admit the findings, conclusions, and determinations by the Attorney General set forth in this Assurance except as set forth in Sections I(B) & I(D), but agrees to voluntarily implement the improvements to its policies and procedures set forth in this Assurance to avoid the time, expense, and distraction of a continued investigation or possible litigation. By entering into this Assurance, and agreeing to be bound by its terms, the Diocese does not waive its right, in other proceedings and actions, including, but not limited to, actions by the OAG, to challenge, pursuant to applicable authority, including, but not limited to, the First Amendment of the U.S. Constitution, the New York State Constitution, New York State law, such as the Religious Corporations Law (“RCL”), and case law, the constitutionality and legality of the OAG’s exercise

⁴ “Clergy” refers to bishops, priests, and deacons of the Diocese. “Employees” and “Volunteers” refer to lay individuals providing services to or on behalf of the Diocese or any of its parishes or parish schools, with the former referring to such persons who are paid and the latter referring to those who are not, and not including independent contractors or occasional or one-time workers.

⁵ The “Diocese’s Policies” refer to, collectively and as such terms are defined below, the Diocesan SAP Policy, the Codes of Conduct, the Code Violations Procedures, the Whistleblower Policy, the Monitoring Procedures, the Record-Keeping Policies and the Reporting and Referral Policies.

of power pursuant to Section 8-1.4 of the EPTL and Section 112 of the N-PCL to investigate its conduct.⁶

I. THE OAG CONCLUDES AS FOLLOWS:

A. PRELIMINARY STATEMENT

1. On September 6, 2018, the OAG served a Subpoena Duces Tecum (the “Subpoena”) upon the Diocese in connection with the commencement of its Investigation into the Diocese’s response to Abuse and Improper Conduct Allegations. In response to the Subpoena, the Diocese produced for the OAG’s review a substantial number of diocesan records, including Clergy files, Diocesan policies and procedures, and internal correspondence, as well as investigative reports and documents related to the work of the Diocesan Review Board (“DRB”).⁷ The Diocese also produced certain files provided pursuant to a November 10, 2020 Confidentiality and Non-Waiver Agreement In Connection With Settlement Discussions (the “Non-Waiver Agreement”). In connection with the Investigation, the OAG reviewed Diocesan files concerning 33 Clergy, including 18 Clergy members against whom the Abuse Allegations had been deemed “credible” or where the Abuse Allegations were admitted, as well as 15 where the Abuse Allegations were determined to be “not credible” or “unsubstantiated.”

2. In 2003, after the U.S. Conference of Catholic Bishops (“USCCB”) adopted the Charter for the Protection of Children and Young People (the “Charter”) in 2002, the Diocese adopted revised policies and procedures to improve its response to the Abuse Allegations, including implementing an independent process for receiving and investigating the Abuse

⁶ To reach a consensual resolution of this Investigation, the Diocese agrees not to contest the enforceability of this Assurance.

⁷ As described in greater detail in paragraph 23 below, the DRB is an independent review panel constituted by each diocese for the purpose of providing the diocesan bishop with counsel and advice regarding claims of Abuse by Clergy involving minors or Vulnerable Persons.

Allegations and creating several offices and programs dedicated to supporting victim-survivors of childhood sexual abuse and their families.

3. As a result of its Investigation, the OAG has concluded that the Diocese did not always follow those post-2002 revised policies and procedures. In addition, the OAG has concluded that the post-2002 revised policies and procedures were not adequate in certain respects. Further changes to the Diocese's policies and procedures are necessary to ensure that the Abuse and Improper Conduct Allegations are addressed sufficiently and promptly, as well as to enhance the Diocese's ability to monitor Clergy against whom credible Abuse Allegations or Improper Conduct Allegations have been made. The OAG's review took into consideration the guidance promulgated by the USCCB in 2002, which formed the basis for many of the Diocese's own policies and procedures that were revised in 2003.

4. In particular, the OAG concludes that since 2002, the Diocese's investigation of, and response to, the Abuse Allegations involved the following issues: (a) the DRB and Diocesan Bishop applied inconsistent standards to determine if an Abuse Allegation was credible, which resulted in inconsistent and, at times, incorrect determinations; (b) the Diocese failed to adequately monitor some priests against whom Abuse or Improper Conduct Allegations were made, including priests who were placed on administrative leave or who were confined to a life of prayer and penance; (c) the Diocese, on occasion, delayed for long periods before completing investigations and taking other steps required by its policies and procedures, such as in publicly disclosing changes in the status of Clergy against whom credible Abuse Allegations were made; (d) the Diocese lacked certain policies and procedures, such as a whistleblower policy and detailed procedures for monitoring accused Clergy, that are necessary to ensure a robust and timely response to the Abuse and Improper Conduct Allegations; and (e) Diocesan personnel occasionally did not comply with policies and procedures concerning internal reporting of relevant information

regarding ongoing investigations of the Abuse Allegations and Improper Conduct Allegations to those within the Diocese charged with addressing such matters.

5. In determining that a resolution and the relief provided in this Assurance is appropriate, the OAG has taken into account the commitment Bishop Brennan personally expressed to the OAG to ensure enforcement of the Diocese's Policies and their enhancements pursuant to the terms of this Assurance. The OAG has also taken into account the Diocese's meaningful efforts to cooperate with the Investigation. After the Investigation was commenced, the Diocese expressed a commitment to work with the OAG to improve its response to the Abuse and Improper Conduct Allegations by implementing innovative enhancements to best protect children, including the enhanced policies and procedures set forth below, and by agreeing to a monitor to oversee the implementation of and compliance with those policies and procedures. The Diocese's cooperation went beyond responding to the Subpoena. The Diocese also provided information to the OAG on request, answered inquiries and engaged in discussions about the OAG's findings, as well as adopted the remedial measures set forth below that address the concerns the Investigation raised and those being considered by the Diocese.

6. The OAG has also considered the Diocese's actions prior to commencement of the Investigation to establish, implement and reform its policies and procedures for combatting sexual abuse. The Diocese's efforts from 2003 to the present to strengthen its policies and procedures were significant and improved the Diocese's response to sexual abuse.

7. The OAG has found, and the Diocese has agreed, that the independent oversight and additional enhancements that the Diocese is adopting in connection with this Assurance will improve the Diocese's response to Abuse and Improper Conduct Allegations with respect to minors and Vulnerable Persons made against Clergy and others, which Abuse and Improper Conduct the Diocese acknowledges are serious problems that require vigilance and attention. The

Diocese's demonstrated initiative prior to the commencement of the Investigation to assess and improve its institutional response was an important factor in reaching this voluntary resolution.

B. PARTIES

8. The Attorney General is responsible for overseeing New York not-for-profit corporations, including entities that incorporate under the RCL, and their respective officers, trustees and other fiduciaries.

9. The Diocese of Brooklyn is a juridic person established under Roman Catholic canon law and other applicable ecclesiastical laws, rules, usages and disciplines of the Roman Catholic Church ("Church Law") in 1853. The Diocese as it exists today was incorporated in 1899 pursuant to Section 15 of the Religious Corporations Law of the State of New York.

10. The Diocese serves approximately 1.3 million Catholics across 177 parishes in Brooklyn and Queens.

11. The Diocese and its parishes are served by both Diocesan priests and Order priests. Deacons, who are members of the Clergy, as well as nuns, monks and others, who are consecrated members of Religious Orders (as defined below) but not considered clergy, also serve within the territory of the Diocese.

12. A Diocesan priest is ordained and/or incardinated within the Diocese, is generally dedicated to serve the needs of his assigned parish or to perform other roles within the Diocese, and generally resides at a parish.

13. Order priests are incardinated within and belong to an Order, such as the Jesuits or Franciscans, and take certain vows, which may include poverty, chastity, and obedience to the head of their Order ("Order" or "Religious Order"). Order priests may work in parishes, including pursuant to contracts with the Diocese. A Diocesan Bishop may also entrust a parish to a particular Religious Order. Order priests may also work in other roles within the territory of a diocese, such

as teaching in schools or colleges. In instances where a Diocesan Bishop has entrusted a parish to a particular Religious Order, that work may or may not be subject to the Bishop's canonical authority, depending on the facts and circumstances.

C. RELEVANT LEGAL BACKGROUND⁸

14. The Diocese is a religious corporation subject to the New York Religious Corporations Law, including, but not limited to, RCL Section 5. Under Section 2-b(1) of the RCL, the Diocese is also subject to the N-PCL, except that if a provision of the N-PCL conflicts with the RCL, the provisions of the RCL prevail.

15. Pursuant to RCL Section 2-b(1), together with N-PCL Sections 112(a)(1) and 112(b)(6), the Attorney General may investigate and seek to restrain a religious corporation from "carrying on unauthorized activities."

16. Further, the Attorney General maintains that the Diocese is subject to the provisions of Section 8-1.4 of the EPTL because it is a trustee that holds and administers property for a charitable purpose. EPTL § 8-1.4(a); *see* RCL §§ 2-b, 5; N-PCL § 102(3-a)-(3-b). Pursuant to EPTL section 8.1-4(m), the OAG may "institute appropriate proceedings to secure . . . the proper administration" of any charitable corporation subject to the EPTL.

⁸ The Diocese does not adopt or agree to the statement of law, including with respect to the OAG's authority, contained in the above section entitled Relevant Legal Background, and the Diocese does not agree to be bound by any statement of law contained herein in other proceedings and actions, including, but not limited to, proceedings or actions by the Attorney General. The Diocese expressly reserves its rights in such proceedings or actions to contest the interpretation and application of the statutes discussed herein. However, to avoid any doubt or confusion, as stated in note 6 above, the Diocese does not challenge the OAG's authority to enter into or enforce the terms of this Assurance.

D. BACKGROUND: The Adoption and Implementation of the Charter, the Essential Norms, and the Diocese's Internal Policies and Procedures

17. The Diocese is currently governed by interrelated policies and procedures that set forth how to address allegations and instances of sexual abuse of a minor, which include: (a) the Charter;⁹ (b) the Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons (the “Essential Norms”); (c) the policies and procedures adopted by the Diocese in 2003, which have been revised and updated since that adoption; and (d) general Church Law and teachings of the Roman Catholic Faith.

18. The Charter was adopted in 2002, after the USCCB met and acknowledged that “[t]he Catholic Church in the United States is in a very grave crisis.” The president of the USCCB at the time recited that there was “a profound loss of confidence by the faithful in our leadership as shepherds, because of our failures in addressing the crime of the sexual abuse of children and young people by priests and church personnel.”

19. The USCCB convened an Ad Hoc Committee on Sexual Abuse, which began to develop reforms to the policies and procedures the Church had in place for dealing with Abuse Allegations. Some of these reforms were embodied in the Charter. The USCCB approved the Charter at a conference in Dallas, Texas in June 2002 and agreed to adopt and implement certain policies and procedures for addressing Abuse Allegations. The Charter was amended in 2005, 2011 and 2018.

20. Soon after the Charter was approved, the USCCB, with the approval of the Vatican, decreed the Essential Norms to establish binding procedures for responding to Abuse Allegations. The Essential Norms, which constitute law for all dioceses in the U.S., require that each diocese have a written policy that implements those Norms and creates specific procedures for addressing

⁹ Religious Orders are not subject to the Charter and have their own policies and procedures.

Abuse Allegations. The Charter and the Essential Norms did not directly address the issue of Improper Conduct, and instead left the issue of Improper Conduct to the development of diocesan policies, through Charter-required Codes of Conduct.

21. The Diocese and its leaders have been bound by the Essential Norms since their adoption and, after its approval by the USCCB in 2002, have incorporated the Charter's requirements into the Diocese's policies and procedures concerning sexual abuse, which the Diocese substantially revised in 2003.

22. The Diocese represents that together, the Essential Norms, Church Law, the teachings of the Roman Catholic Faith, and the Diocese's own policies (which incorporate the principles of the Charter) mandate the review, evaluation, and investigation of all Abuse Allegations. They describe, in part, the steps that the Diocese is required to take at each juncture in its response to the Abuse Allegations, particularly, the initial receipt of an Abuse Allegation, the Diocese's internal investigation, the credibility determination of the Abuse Allegation, and eventual public disclosure of a finding of a credible Abuse Allegation.

23. The provisions of the Charter and Essential Norms provide that each diocese is required to constitute a diocesan review board, which is a review panel designed to provide the Diocesan Bishop with an advisory assessment of the Abuse Allegations and a recommendation on how to respond. (Ch. Art. 2; Norms 4 & 5.) The Charter provides that a majority of a diocesan review board consists of lay persons not employed by the diocese, and it explains that a diocesan review board is to assist the bishop in reviewing particular Abuse Allegations, a priest's suitability for ministry, and relevant policies and procedures. (Ch. Art. 2.) The Essential Norms further require that the DRB consist of: (a) at least five members "of outstanding integrity and good judgment in full communion with the Church," who will serve for a term of five years; (b) at least

one member who is an “experienced and respected pastor” of the diocese; and (c) at least one member experienced in the “treatment of the sexual abuse of minors.” (Norm 5.)

24. The Charter, the Essential Norms and the Diocese’s own policies (as more fully defined below, the “Diocesan SAP Policy”) further provide that:

- a) upon receipt of an Abuse Allegation, the Diocese must conduct an internal investigation thereof unless it determines that the investigation of the Abuse Allegation would be “entirely superfluous” (Diocesan SAP Policy, § IV);
- b) if the Abuse Allegation merits an internal investigation, the bishop will initiate by decree an objective and timely investigation (*see id.*; Norm 6);
- c) the information gathered during the investigation will be presented to the DRB, which provides an assessment to the bishop (*id.*; *see* Ch. Art. 2; Norm 4);
- d) “[w]hen there is sufficient evidence that sexual abuse of a minor has occurred,” the bishop must notify the Vatican, specifically, the Congregation for the Doctrine of the Faith, which has been renamed the Dicastery for the Doctrine of the Faith (“DDF”) (Diocesan SAP Policy, § V; Norm 6);
- e) the diocesan bishop must then apply specified precautionary measures, including “withdraw[ing] the accused from exercising the sacred ministry or any ecclesiastical office or function, impos[ing] or prohibit[ing] residence in a given place or territory, and prohibit[ing] public participation in the Most Holy Eucharist pending the outcome of the process.” Such measures could extend indefinitely (Norm 6);
- f) in every case involving canonical penalties, such as laicization or a life of prayer and penance, specific canonical processes must be followed as directed by the DDF (Norm 8); and

g) the Diocese must communicate with the public about sexual abuse of minors by clergy in an “open and transparent” manner, “within the confines of respect for the privacy and the reputation of the individuals involved” (Ch. Art. 7).

25. Bishops have the canonical authority to administratively remove diocesan priests from active ministry for an indefinite period of time.

26. The initial version of the Charter and the Essential Norms established the following policy: “Where sexual abuse by a priest or a deacon is admitted or is established after an appropriate investigation, . . . [d]iocesan/eparchial policy will provide that for even a single act of sexual abuse. . . of a minor—past, present, or future—the offending priest or deacon will be permanently removed from ministry.” All subsequent versions of the Charter contain this policy, and the Essential Norms reiterate essentially the same standard.¹⁰

27. Transparency regarding Abuse Allegations, within the confines of respect for the privacy and reputation of the individuals involved, is an objective of the Charter, which is expressly addressed in the original and each subsequent version of the Charter. The 2002 Charter provides that each diocese will develop a communication policy that reflects a commitment to transparency and openness. The 2005 Charter builds on the 2002 policy and adds an explicit commitment that parishes “be open and transparent in communicating with the public about sexual abuse of minors by clergy.”

¹⁰ The current version of the Charter and Essential Norms was last revised in June 2018, and includes the following: “Diocesan/eparchial policy is to provide that for even a single act of sexual abuse of a minor—whenever it occurred—which is admitted or established after an appropriate process in accord with canon law, the offending priest or deacon is to be permanently removed from ministry and, if warranted, dismissed from the clerical state. In keeping with the stated purpose of this *Charter*, an offending priest or deacon is to be offered therapeutic professional assistance both for the purpose of prevention and also for his own healing and well-being.”

28. In compliance with the Essential Norms, in 2003, at the direction of Bishop Daily, who led the Diocese at the time, the Diocese substantially revised its policies and procedures to address the Abuse Allegations and thereafter periodically revised them. After the OAG commenced its investigation, the Diocese adopted its current Policy and Procedures Regarding Sexual Abuse of Minors by Priests or Deacons (the “Diocesan SAP Policy”), which became effective in April 2022 by the mandate of Bishop Brennan.¹¹ The Diocesan SAP Policy states that it is meant to comply with the requirements of the Charter and the Essential Norms, and the introduction represents that “the Diocese wishes to do everything possible to see that all people, particularly children and young people, are safe in all pastoral settings.” The Diocesan SAP Policy states, in pertinent part, that:

- a) all incidents of reported sexual abuse of minors must be referred to the appropriate law enforcement officials (§§ I & II);
- b) a copy of the report of sexual abuse of a minor will also be forwarded to the Chancellor, the Victims Assistance Coordinator (“VAC”), the Chairperson of the DRB, the Vicar for Clergy, and the Promoter of Justice (§ II);
- c) the VAC will provide immediate pastoral care to persons who claim to have been sexually abused when they were minors, as well as counseling, and the opportunity to meet with the Diocesan Bishop (the “Bishop”) directly (§§ II & V);
- d) all Abuse Allegations will be brought to the attention of the accused Clergy, even if the complainant is anonymous. However, if law enforcement is conducting an

¹¹ The Diocesan SAP Policy, effective in April 2022, is identical in all material respects to the prior version of the policy, which was put into place on October 2, 2013, by mandate of Bishop DiMarzio. As set forth in more detail below, the Diocese’s policies and procedures relating to sexual abuse, including the Diocesan SAP Policy, will be amended to incorporate the terms of this Assurance.

active investigation into the Abuse Allegation, the Clergy member will not necessarily be notified until the conclusion of the law enforcement investigation. Once an Abuse Allegation is received, the Bishop may impose an immediate and indefinite administrative leave on the priest (§ IV);

- e) when the Bishop has knowledge of an Abuse Allegation, he initiates an inquiry into the Abuse Allegation, unless he determines that such an inquiry would be “entirely superfluous” (§ IV);
- f) the DRB assists the Bishop in conducting that inquiry and, in order to provide the DRB with sufficient information for consideration, the Bishop designates a private investigative agency to assist the DRB (§ III);
- g) the DRB will advise the Bishop in writing of its assessment of the sufficiency of the evidence, the suitability for ministry of the Clergy, and any other aspect of the case (§ IV). Accompanying its recommendations will be supporting documents, including the reasons for coming to the conclusions that it has reached (*id.*);
- h) when the Bishop determines there is “sufficient evidence that sexual abuse of a minor has occurred,” he will, among other things:
 - i. notify the DDF for further instruction on how to proceed;
 - ii. issue a decree that the priest: (a) is permitted to celebrate Mass privately only; (b) is not permitted to exercise any public ministry; (c) may be required to depart from his place of residence; and (d) may be placed on a temporary, scaled-down remuneration;
 - iii. write a letter to the parish where the priest is assigned , “to be read by the Episcopal Vicar, regarding the investigation and the steps that have been taken” (§ V); and

- iv. in the instructions from the DDF, the Diocese may be directed to conduct a canonical trial and should the trial determine that a canon law crime has been committed, various penal measures may be imposed, including permanent removal from ministry or dismissal from the clerical state (§ V). Should the trial fail to determine there was a crime under canonical law, the Bishop shall consult the DRB in order to make a final determination regarding the ultimate status of the Clergy, such as whether the Clergy may be permitted to resume or to remain in active ministry (*id.*).

29. In addition to the Diocesan SAP Policy, the Diocese has implemented separate Codes of Conduct for Employees, Volunteers, and Clergy, which were last revised as of January 11, 2022 (“Codes of Conduct”).¹² The earliest Code of Conduct for Clergy provided by the Diocese to the OAG is dated June 2007. The Codes generally require these adults to maintain boundaries, act with respect and professionalism and do nothing to harm or intimidate children. Specifically, the Codes of Conduct forbid, among other things:

- a) communication with children by electronic means unless the materials are for programs at the church;
- b) assisting children in accessing pornography;
- c) photographing children without parental consent;
- d) using or being under the influence of drugs or alcohol while with children; and
- e) using profanity or sexual language around children.

¹² Current versions of each of the Diocese’s Codes of Conduct are publicly available on the Diocese’s website. See “Office of Safe Environment,” Diocese of Brooklyn, <https://dioceseofbrooklyn.org/protecting-children/office-of-safe-environment/> (last updated 2021). As set forth in more detail below, the Diocese’s Codes of Conduct will be amended to incorporate the terms of this Assurance.

Each person subject to the Codes of Conduct must sign a document acknowledging that they are bound by the terms of the applicable code, subject to dismissal or other disciplinary actions.

E. THE OAG'S INVESTIGATION OF THE DIOCESE

30. As noted above, the OAG's Investigation was commenced by service of the Subpoena upon the Diocese seeking documents regarding the receipt and investigation of, and response to, the Abuse Allegations.

31. In addition to producing documents in response to the Subpoena, the Diocese also initiated meetings with the OAG to proffer information relevant to the Investigation, during which the Diocese made presentations concerning its policies and procedures for handling the Abuse and Improper Conduct Allegations, and the Diocese proposed a settlement structure that included, among other things, a commitment to maintain and enhance its policies and procedures and to appoint an independent third party to monitor its compliance with those policies and procedures. These meetings were attended by representatives of the Diocese with firsthand knowledge of the Diocese's programs, including two members of the Diocese's senior leadership.

32. The OAG conducted an extensive review of Diocesan internal records to assess the Diocese's compliance with applicable New York law. A necessary part of that assessment entailed considering the adequacy of, as well as compliance with, the Diocese's own policies and procedures, including a selective review of files maintained by the Diocese concerning 33 priests accused of sexual abuse of minors. All but one of the 33 accused priests had been members of the Clergy before the Charter and Essential Norms were adopted. Many of the priests were the subject of the Abuse Allegations reported to the Diocese prior to 2002, when the Diocese's relevant written policy applied to allegations of "inappropriate behavior which threaten the health and well-being of minors" and did not require specific procedures, standards of review or monitoring. That policy changed when the Diocese revised its policies and procedures in 2003.

33. In conducting the review of Clergy files, the OAG selected Clergy files based on several criteria aimed at ensuring both that a representative sample of Clergy files evaluated by the DRB after 2002 were considered as well as files that were most likely to reveal problems in the process. For example, the OAG selected files for review where an original determination of no credibility by the DRB was later reversed, after additional information was uncovered, and found to be credible, or where there were significant gaps between when a complaint was received and when the Clergy member was laicized or removed from active ministry. In addition, as a check, the OAG also reviewed a number of Clergy files where the Abuse Allegations were found to not be credible in order to evaluate the procedures followed in making such determinations.

34. The Clergy files the OAG reviewed reflected situations where the Abuse Allegations were: (a) ultimately found to have been substantiated by the DRB and Bishop, but where there had been significant delays in addressing the Abuse Allegations; (b) initially found to have been unsubstantiated but that determination was later changed and found to be substantiated; and (c) found to have been unsubstantiated. The Clergy files also reflected situations involving Improper Conduct Allegations.

35. During the latter stages of the OAG investigation, the OAG learned of a recent complaint alleging that information known to a senior Diocesan official regarding Improper Conduct Allegations was not properly disclosed by that official to all appropriate Diocesan personnel and the DRB. The OAG undertook additional investigation into these allegations, including reviewing documents relating to that complaint and interviewing witnesses.

F. SIGNIFICANT FINDINGS FROM THE OAG'S INVESTIGATION OF THE DIOCESE

i. Overview

36. The OAG's investigation focused on the Diocese's response to Abuse and Improper Conduct Allegations post-2002. The OAG, however, did consider that there were numerous

instances prior to 2002 where the Diocese received Abuse or Improper Conduct Allegations and (a) failed to investigate adequately those allegations or (b) failed to take steps to ensure that Clergy who were credibly accused of Abuse or against whom there was sufficient evidence of Improper Conduct could not continue their wrongdoing by disclosing their names, monitoring them, or removing them from situations where they would come into contact with minors. Beginning in 2002, the Diocese made significant efforts to improve its response to the Abuse Allegations consistent with the church policy announced by the USCCB at the Dallas conference. The Investigation found numerous instances where the Diocese received the Abuse Allegations and handled those Abuse Allegations in accordance with the improved procedures. In most cases, the Diocese timely referred the Abuse Allegations to the DRB and hired an independent investigator to investigate the charges. The investigations carried out for the DRB were usually thorough and entailed interviews of numerous witnesses by qualified investigators who prepared detailed written reports of their findings. Minutes of the DRB meetings were not regularly prepared until 2018, but the DRB did, in most cases, issue written recommendations to the Bishop. As a result of these investigations and determinations, the Diocese has publicly identified 72 Clergy against whom the Abuse Allegations have either been deemed credible¹³ or have been admitted, as well as 45 Clergy

¹³ As set forth in Bishop DiMarzio's February 15, 2019 letter explaining the publication of the list, the "individuals named on this list have either admitted to sexual misconduct with a minor, or have had allegations filed against them that have been found credible by the Diocesan Review Board, or through the IRCP Process." (A copy of the letter and list is available on the Diocese's website (*see* <https://dioceseofbrooklyn.org/protecting-children/sex-abuse-crisis-response/list/> and is annexed hereto as Exhibit 1.) The Diocese's Independent Reconciliation and Compensation Program or "IRCP" was a program designed to allow survivors of abuse by priests or deacons of the Diocese to seek financial compensation in lieu of commencing litigation. The program, which was available from June 2017 through April 2022, was administered by Kenneth Feinberg, who independently determined the amount of compensation available to individual survivors.

who died before a finding of credibility was reached.¹⁴ Nonetheless, and despite these steps, the OAG has concluded that, in certain instances, the Diocese's efforts in addressing the Abuse and Improper Conduct Allegations fell short because it either did not have policies and procedures that would ensure a consistent, timely and robust response to such Abuse and Improper Conduct Allegations or it did not follow the policies that it had in place. Section I(F)(vi), entitled Clergy Case Histories, provides select examples to illustrate the issues that the Investigation revealed.¹⁵

37. The OAG's Investigation regarding the Diocese's post-2002 conduct concluded that there were four primary, but overlapping, areas where the Diocese failed to have adequate policies and procedures in place and/or, in certain cases, follow the policies and procedures it did have with respect to addressing the Abuse and Improper Conduct Allegations:

- a) Delays and Other Failures to Follow the Governing Policies. The OAG concluded that the Diocese did not always address the Abuse and Improper Conduct Allegations in a timely manner and, in some instances, failed to follow the Diocese's Policies regarding the prompt commencement of an internal investigation and/or accurate and transparent communication with the public. In addition, in some instances, the Diocese did not comply with the requirement that certain determinations in the process be documented, or certain diocesan personnel

¹⁴ The Diocesan website also identifies two priests against whom Abuse Allegations were made that were found unsubstantiated by the Diocese, but with respect to whom the claimants were permitted to participate in the IRCP. In addition, the Diocesan website also identifies one priest with respect to whom the DRB and the IRCP determined that the Abuse Allegations were unsubstantiated.

¹⁵ The names of the Clergy members that are discussed in Section I(F)(vi), below, and referenced herein have been replaced with pseudonyms because these Clergy members are not parties to this Assurance and the factual recitations are given in order to set forth the Diocese's response to the particular Abuse and Improper Conduct Allegations.

did not provide all relevant information pertaining to the Abuse or Improper Conduct Allegations to the DRB and diocesan officials;

- b) The Application of Heightened and Inconsistent Standards in Reviewing the Abuse Allegations. The OAG concluded that the Diocese, through the DRB and the Bishop, applied an inconsistent and, at times, heightened standard for determining whether the Abuse Allegations were “sufficient” or “credible” and that there was a corresponding lack of clarity in the Diocese’s Policies relating to this standard;
- c) Insufficient Clergy Monitoring. The OAG concluded that the Diocese failed to uniformly and adequately monitor Clergy against whom an Abuse or Improper Conduct Allegation had been made and was unresolved or found to be credible; and
- d) The Lack of Certain Policies. The OAG concluded that the Diocese lacked certain policies and procedures that are needed to ensure a prompt and thorough response to the Abuse and Improper Conduct Allegations.

ii. Delays and Other Failures to Follow the Governing Policies

38. The OAG concluded that there were certain instances in which the Diocese failed to follow the Diocese’s Policies that were implemented in 2003 and in the following years. Those failures include the Diocese: (a) delaying in referring matters to the DRB, concluding the DRB’s investigations, and following other steps required by its policies and procedures; (b) electing not to conduct an independent investigation; and (c) not promptly revealing the names of Clergy against whom Abuse Allegations were found to be credible as soon as the cases were resolved.

39. Both the Essential Norms and the Diocesan SAP Policies mandate that certain actions be taken “promptly,” “immediately” and “timely” to ensure as accurate an assessment of the particular situation as possible. (Diocesan SAP Policy, §§ I, II; Norm 6.)

40. The OAG, based upon its Investigation, concluded that, at times, the Diocese was required by the Diocese's Policies to take certain affirmative acts in connection with the receipt of the Abuse Allegations, yet the Diocese failed to follow those directives. Pursuant to the Diocesan SAP Policy, once the Diocesan Bishop determines that an Abuse Allegation "at least seems to be true, he initiates a canonical inquiry, unless he determines that such an inquiry seems entirely superfluous" (e.g., if the Clergy has admitted to the Abuse Allegation). (Diocesan SAP Policy, § IV.) Additionally, as mandated by the Diocesan SAP Policy, "in order to provide the [DRB] with sufficient information for their consideration, the Diocesan Bishop will designate a private investigative agency" to conduct an objective investigation. (*Id.* § III; Norm 6.) However, the OAG concluded that there were several instances where these mandates were not followed. For example, the OAG found certain instances where the Diocese did not initially conduct a thorough independent investigation and instead relied on a Clergy member's denials and internal investigations and/or did not issue a written report. (*See* Section I(F)(vi), case histories of Fr. C & Fr. D, *infra*.)

41. The OAG also concluded, based upon its Investigation, that there were several cases where the Diocese did not comply with the mandate in the Diocese's Policies to communicate with the public in an open and honest manner and to inform the parishes where credibly accused priests serve and/or served about the Abuse Allegations. (Charter Art. 7; Diocesan SAP Policy, § V.) For example, the OAG found instances where the Diocese: (i) did not reveal the reasons for a priest's removal from active ministry, failing to correct or amend a prior representation that a priest was resigning for health reasons; (ii) honored a priest's request to keep his agreement to be laicized confidential for many years; and (iii) did not inform a school where a priest worked while on a leave of absence from his parish assignment (but when he was still a member of the Clergy) of his record of alleged sexual abuse. (*See* Section I(F)(vi), case histories of Fr. B, Fr. E, & Fr. F, *infra*.)

42. The Diocesan SAP Policy further directs that when a case is formally assigned to the DRB, the DRB must advise the “Bishop in writing of its assessment of the sufficiency of the evidence, the suitability for ministry of the priest . . .,” and that “[a]ccompanying its recommendations will be supporting documentation, including the reasons for coming to the conclusions that it has reached.” (Diocesan SAP Policy, § IV.) However, the DRB’s initial determinations that the Abuse Allegations against Fr. C and Fr. D were not credible lacked a written explanation or supporting evidence. (See Section I(F)(vi), case histories, *infra*.) Both determinations were later reversed after the Diocese and the DRB received additional Abuse Allegations, in connection with which the Diocese and the DRB followed proper procedures by conducting independent and thorough investigations and provided a written explanation for their conclusions. (See *id.*) In one instance, the OAG concluded that the Diocese and the DRB did not comply with the Diocese’s Policies requiring written explanations of the DRB’s findings and attempted to avoid any written record of the harmful information that was discovered, thus undermining the goals of accountability and transparency. (See Section I(F)(vi), case history of Fr. G, *infra*.) Finally, in another case, a Diocesan official failed to provide relevant information concerning allegations of Improper Conduct about a priest under investigation to the DRB and other Diocesan officials as required by the Diocese’s Policies. (See Section I(F)(vi), case history of Fr. K, *infra*.)

iii. The Application of Heightened and Inconsistent Standards in Reviewing the Abuse Allegations

43. Pursuant to the Essential Norms, it is the responsibility of the DRB and the Bishop to determine whether, after a thorough investigation, there is “sufficient evidence” that sexual abuse has occurred. (Norm 6.) If so, the Essential Norms direct the Diocese to (i) notify the DDF, and (ii) administratively remove the priest from active ministry. (*Id.*)

44. The Diocesan SAP Policy incorporates the “sufficient evidence” standard from the Essential Norms, although what constitutes “sufficient evidence” is not defined in either the Essential Norms or the Diocesan SAP Policy. (Diocesan SAP Policy, § IV & n.3.) The OAG, based upon its Investigation, concluded that there were inconsistencies in the evidentiary standards applied across cases. In the vast majority of cases the OAG reviewed, the DRB and the Bishop described their inquiry as determining whether or not the evidence presented was “credible” (or the Abuse Allegation was “substantiated”) rather than whether the evidence was “sufficient.”

45. The OAG also concluded that, in some instances, the DRB was inconsistent and applied a higher standard of proof than the “sufficient evidence” standard in the Diocese’s Policies and the Essential Norms. In those cases, the DRB determined, and the Bishop agreed, that the Abuse Allegations were not credible because the Abuse Allegations concerning the acts of abuse (as opposed to supporting details) were not corroborated by other victims or witnesses. This resulted in a Clergy member with serious Abuse Allegations against him being left in ministry without precautions being taken. In the case of Fr. H, the alleged victim was found to be more credible than the accused Clergy member, whose account of what transpired had, in the investigator’s opinion, “a fair amount of prevarication.” (See Section I(F)(vi), case history of Fr. H, *infra*.) In addition, before the accuser came forward, several witnesses, including nuns with whom Fr. H worked, had complained to the Diocese about his behavior because they were worried that he might be committing abuse. (See *id.*) The investigation was thorough and numerous witnesses corroborated important details of the accuser’s story, but no one witnessed the abuse itself and, at the time, only one victim had come forward. (*Id.*) The Abuse Allegations were found to be not credible. (*Id.*) It was not until another victim came forward years later that the Diocese concluded that the original Abuse Allegations against Fr. H were credible. (*Id.*) Similarly, in one case, the Diocese determined that allegations of Improper Conduct when the victim was a minor

were not credible despite that the accused Clergy member admitted taking the alleged victim to a male prostitute. (*See* Section I(F)(vi), Fr. J., *infra*) Although there was evidence that the victim was over 18 at the time, there were also other Improper Conduct Allegations from the time before the victim turned 18. There were also witnesses who corroborated certain details regarding those Improper Conduct Allegations, which indicated that the Clergy member had an improper relationship with the alleged victim when the victim was a minor.

iv. Insufficient Clergy Monitoring

46. The OAG also concluded that certain Clergy against whom Abuse or Improper Conduct Allegations had been made, even where they were placed on administrative leave or relegated to a life of prayer and penance, were not adequately monitored by the Diocese, and the Diocese did not have sufficient systems in place to routinely monitor such Clergy. In certain instances, Abuse Allegations were found to be not credible, but Improper Conduct Allegations were found to be credible, and the DRB determined that the credible Improper Conduct Allegations required monitoring, but no systematic monitoring was done. (*See, e.g.*, Section I(F)(vi), case histories of Fr. F & Fr. H.) In one other case, the Clergy member had been removed from active ministry but was not monitored in any systematic way. (*See id.*, case history of Fr. I.)

v. The Lack of Certain Policies

47. The Investigation also concluded that the Diocese lacked certain policies and procedures described below that are critical to protecting minors from sexual abuse and responding to Abuse and Improper Conduct Allegations. In addition, the Investigation also concluded that other existing policies and procedures needed to be improved in order to better protect minors, as set forth below.

48. First, the OAG concluded that the Diocese did not implement a whistleblower policy, and that its reporting mechanisms could be improved to better encourage individuals to come

forward with information regarding the abuse of minors. Currently, the Diocese maintains a reporting line staffed by an independent attorney that complainants can call, including confidentially, to report abuse or related information, such as suspected abuse, or suspected Improper Conduct. Those reports are sent in real time to the Kings and Queens County District Attorneys, as applicable. However, the Diocese could improve its reporting process by offering multiple methods of reporting complaints in confidence without fear of retaliation.

49. Second, the Investigation also concluded that while the Diocese's Codes of Conduct provide a solid framework, they should more thoroughly describe potential grooming behavior and more clearly set forth the consequences for those violations.

50. Third, the Investigation found that the Diocese did not have a policy in place concerning the issuance of referral letters to potential employers in response to requests concerning a Clergy member's suitability to work with minor children when there was a prior Abuse or Improper Conduct Allegation.

51. Finally, the Diocese's processes should establish concrete obligations and time limitations for its responses to the Abuse and Improper Conduct Allegations to prevent undue delays or failures to adequately respond to claims.

vi. Clergy Case Histories¹⁶

52. Father A.

- In the late 1990s, the Diocese received Abuse Allegations against Fr. A from two brothers, describing instances that had allegedly occurred in the early 1970s.
- In May 2002, those same two brothers informed the Queens District Attorney's office ("DA") of the Abuse Allegations against Fr. A that they had previously communicated to the Diocese starting in the late 1990s. After the DA publicly announced its investigation of Fr. A, the Diocese sent the complaints it had received about Fr. A to the DA.

¹⁶ In the examples discussed in this section, the Diocese informed the relevant district attorney's office of all of the Abuse Allegations in 2002, or, if the Diocese received the Abuse Allegation after 2002, promptly upon the Diocese's receipt of the Abuse Allegation.

- On July 9, 2002, the DA informed the Diocese that it had conducted an investigation of the Abuse Allegations against Fr. A and determined the Abuse Allegations were “particularly serious and compelling” but that the “Statute of Limitations precludes prosecution of this complaint.” The DA stated that it was “very concerned that [Fr. A] is one of the very few priests who, despite the credible allegations is still assigned to his Parish with no restriction in his duties” and “undoubtedly many of [Fr. A’s] responsibilities involve children.” During a follow-up meeting on July 12, 2002, the head of the Queens DA sex crimes unit at the time informed the Diocese that “[i]f the statute of limitations had not run, they would prosecute [Fr. A] for First Degree Sodomy and he would be going to the Federal Penitentiary.”
- On July 24, 2002, Bishop Daily met with Fr. A and placed him on administrative leave. Two days later, the Diocese issued a press release informing the public that Fr. A was placed on leave due to Abuse Allegations related to sexual misconduct that occurred more than 30 years ago.
- In October 2002, Fr. A refused to agree to the Diocese’s request for a medical evaluation. Upon addressing his congregation about his impending absence, Fr. A falsely represented that he was going on vacation. The OAG has seen no evidence that the Diocese made any effort to correct this misrepresentation.
- The Diocese sent Fr. A’s case to the DRB, which retained an independent investigator to prepare a report.
- In late 2003, the DRB found the Abuse Allegations against Fr. A to be credible.
- During the pendency of its investigation, Fr. A informed diocesan personnel in March 2003 that he was certified as a referee and was coaching basketball and baseball. There is nothing in the file to indicate that anyone at the Diocese investigated whether these activities involved children or otherwise took steps to prevent Fr. A from having contact with children.
- In early 2004, Fr. A was indicted by a Kings County grand jury for abuse of an altar boy that had taken place between 2000 and 2002, during a period prior to the enactment of the Charter, when the Diocese was aware of other Abuse Allegations against Fr. A but had not removed him from ministry and had not taken steps to investigate or monitor him. Fr. A was arrested and pled guilty to a misdemeanor in 2004 for the abuse.

53. **Father B.**

- In 1994, Fr. B admitted to sexually abusing a minor and resigned from ministry, but misleadingly attributed his resignation to health reasons, with the Diocese’s consent. The Diocese continued to pay Fr. B’s insurance and therapy bills.
- In 2003, Fr. B was placed on formal administrative leave but the Diocese did not revise the prior misleading representations regarding Fr. B’s resignation for sixteen years until 2019, when the Diocese first published the online list of credibly accused clergy, thereby failing to timely inform the public that Fr. B had admitted to sexually abusing a minor.

54. Father C.

- Between 1996 and 2009, the Diocese received five Abuse Allegations against Fr. C, some of which were made by adults. In 1996, the Diocese received the first allegation, conducted a limited investigation, and permitted Fr. C to remain in ministry.
- In 2002, the Diocese received the second Abuse Allegation from a boy who said that in the early 1960s, he confessed self-touching to Fr. C and Fr. C made him reenact the touching in the rectory while Fr. C watched through a door with windows. Fr. C denied the Abuse Allegation. A limited inquiry by an independent investigator, which was not reflected in a written report, found that Fr. C was not at the parish on the dates of the alleged abuse, and that the doors through which the victim claimed he was watched by Fr. C had no windows (the latter of which was deemed to be incorrect years later). Based on that, the DRB concluded in 2003 that the Abuse Allegation was “not credible.”
- In 2005, the Diocese received two additional Abuse Allegations against Fr. C, which were referred to the DRB, along with the original complaints. The Diocese retained an independent investigator to investigate the Abuse Allegations. In July 2005, the DRB found all Abuse Allegations against Fr. C to be “not credible.” The DRB decision noted that Fr. C was extremely cooperative, forthcoming and patient, and was highly praised by his associates as a good man and a fine priest.
- Fr. C retired in 2007.
- In September 2017, in connection with the Diocese’s IRCP, the Diocese received another Abuse Allegation against Fr. C and referred that Abuse Allegation, together with the 2002 Abuse Allegation, to the DRB. After an independent investigator was hired, facts supporting the 2002 claim were verified. In May 2018, the DRB unanimously found the Abuse Allegations received in 2002, as well as the latest Abuse Allegations, to be “credible” and they recommended that Fr. C be removed from public ministry.
- Fr. C was permanently removed from ministry in 2018.

55. Father D.

- In 2002, the Diocese received an Abuse Allegation against Fr. D, specifically, that Fr. D had abused an altar boy in the mid-1970s, including kissing him on the mouth and taking him and other boys into the shower alone. The Diocese reported these Abuse Allegations to the DA, but the Diocese determined that, based on Fr. D’s denial of the Abuse Allegations, it would permit him to remain in ministry until the Diocese’s investigation was complete. The Diocese issued a press release informing the public of this decision.
- The Diocese did not conduct an independent investigation of the Abuse Allegation against Fr. D before the Abuse Allegations were sent to the newly formed DRB in the fall of 2003, along with a file that contained interviews of the victim and Fr. D only.
- In November 2003, the DRB found that there was insufficient information to make a determination. The Diocese then retained an independent investigator. The investigator interviewed a cleric, who confirmed his statement previously made to

the Diocese in June 1992 that Fr. D had a “habit of bringing children to his room after letting them sleep in the rectory without parental permission.” The Diocese had taken no action in response to the cleric’s prior statement. Fr. D continued to deny the Abuse Allegations. Two priests who formerly worked with Fr. D stated they never saw any signs of abuse. The investigator could not locate a witness to the abuse and determined that Fr. D was living in Canada during the period of the first incident of alleged abuse. Based on that information, the DRB found in January 2004 that the Abuse Allegations against Fr. D were not credible and recommended he be permitted to remain in ministry in the Diocese.

- In February 2004, a civil action was filed against Fr. D for sexual assault of an altar boy, who was between 10 and 13 years of age, including viewing the victim’s pubic area and masturbating. Bishop DiMarzio forwarded this new Abuse Allegation to the DRB in February or March of 2004. The DRB asked the Bishop not to take any formal action regarding the earlier Abuse Allegations, which the DRB found were not credible, until the DRB had the opportunity to review the new Abuse Allegation.
- In March 2004, the DRB commenced an independent investigation into the claims asserted in the civil action.
- Fr. D retired effective June 1, 2004, but was not placed on administrative leave or otherwise precluded from exercising public ministry in his retirement at that time.
- One investigator investigated the various Abuse Allegations against Fr. D during the period 2003 to 2008. During the period June 2004 to November 2008, there was no reported investigative activity other than an interview of Fr. D in May 2006 and another interview of him in November 2008.
- The investigator issued an interim report in 2008 summarizing additional interviews and stating that she found the victims credible.
- In November 2011, the Diocese received a new Abuse Allegation against Fr. D. After investigating that Abuse Allegation, the investigator issued her final report in April 2012, which found all Abuse Allegations against Fr. D credible. In April 2012, the DRB also concluded that all of the Abuse Allegations were “credible” and stated in its recommendations to Bishop DiMarzio that “[f]or a variety of reasons, primarily the assignment of more pressing investigations by the Diocese, the completion of the [Fr. D] investigation was delayed.”
- In June 2012, Bishop DiMarzio issued a Precept placing Fr. D on administrative leave and suspending his right to exercise his priestly duties. Despite being placed on administrative leave, Fr. D continued teaching family programs and performing counseling.
- In March 2015, the Diocese discovered Fr. D’s violation of the Precept at its monthly spiritual direction group and directed him to cease. Fr. D did not comply and continued traveling to Colombia to teach family programs and counseling, often in homes with children. In January 2018, Bishop DiMarzio issued a Penal Precept to Fr. D based on his failure to comply with the earlier Precept.

56. Father E.

- Prior to 2002, Fr. E admitted to repeated and serious sexual abuse of minors and was removed from all pastoral duties. The Diocese did not at that time reveal his admissions of abuse or otherwise reveal that he committed such abuse.
- After the Charter and Norms were adopted, the Diocese confirmed the prohibition on Fr. E's public ministry by placing him on administrative leave and banning him from living in an ecclesiastical residence but did not publicly disclose his admitted abuse and the restrictions imposed upon him. The Diocese also attempted to convince him in 2002 to seek a voluntary laicization, which he initially refused to do.
- On September 30, 2003, the Diocese informed the bishop of the diocese where Fr. E then resided of the accusations against him and the canonical Precept but did not publicly disclose the accusations or the Precept.
- In 2006, Fr. E finally agreed to a voluntary laicization but requested that his name be kept confidential.
- Fr. E was laicized on May 15, 2007. The Diocese did not publicly disclose his laicization and admissions until ten years later.
- In 2017, when the Diocese publicly announced several names of credibly accused Clergy who had been removed from ministry prior to 2017, the Diocese for the first time publicly disclosed that Fr. E was a priest who had been laicized because he had been credibly accused of, and admitted to, sexually abusing minors. During the period after his laicization but before his abuse was publicly announced, Fr. E served as a professor at two universities.

57. Father F.

- Fr. F took a leave of absence in 1999 from his parish assignment after the Diocese had received Abuse Allegations against him. The Diocese was made aware in 1999 that Fr. F planned to live and work in an upstate New York school, and although the Diocese had been warned that Fr. F should not work with youth under 20 and should be monitored closely, the OAG found no evidence that the Diocese warned the school in which Fr. F subsequently worked, while still a member of the Clergy, of his past behavior and the potential danger he posed to minors.
- Fr. F never returned to his parish or active ministry. He continued to receive benefits from the Diocese until September 2004. The Diocese stopped paying his benefits, but Fr. F remained a priest until 2012, when the Pope granted Bishop DiMarzio's request that he be laicized.

58. Father G.

- According to the Diocese's independent investigator's records, the Diocese was aware prior to 2002 that Fr. G had improper relationships with young adult men, abused alcohol, was accused of theft and was a potential victim of blackmail due to his relationships. The Diocese sent Fr. G to treatment for his alcoholism, after which he retired from ministry in 1996. The Diocese moved Fr. G to a retirement residence in Brooklyn prior to the mandatory retirement age.

- In 2002, the Diocese received an Abuse Allegation accusing Fr. G of abusing an 11- or 12-year-old boy in the early 1970s by exposing himself and attempting oral sex. Fr. G denied the Abuse Allegations. The Diocese did not undertake an independent investigation of the Abuse Allegation or place Fr. G on administrative leave at that time. The Diocese's only documented response, beyond meeting with Fr. G about the Abuse Allegation and submitting the Abuse Allegation to the DA, was to meet with the victim, who asked why a priest the age of Fr. G was living in retirement home.
- In 2004, the Diocese received another Abuse Allegation against Fr. G, this time concerning a 12-year-old boy in the mid-1980s, which included allegations of masturbation, oral and anal sex. Fr. G denied the Abuse Allegations. In May 2004, the Diocese referred these Abuse Allegations to the DRB, which were thereafter investigated by an independent investigator. The investigation uncovered two additional victims. The investigator described Fr. G as a "predator, and a cunning capable liar who preyed on young boys with impunity."
- In September 2004, the DRB wrote to Bishop DiMarzio reporting on their finding that the Abuse Allegations against Fr. G were credible and stating:

the facts and circumstances of this case have revealed that serious irregularities in the handling of this matter and serious failures in the diocesan administrative response in this matter occurred. This case may very well have important legal consequences for the diocese as well as a harmful effect on the reputation of the Church, both among the faithful and the public in general. We feel quite strongly that evidence of what appears to be serious negligence on the part of diocesan officials in the past must be made known to you as soon as practicable...unlike previous recommendations made to you...we feel the seriousness of this case and its potential consequences necessitates that we review our materials and finding with you personally and so **no written summary has been prepared** (emphasis added).

- Thereafter, in November 2004, the Bishop issued a canonical Precept both removing Fr. G from active ministry and placing restrictions on his contact with "other persons and their visits to you at your place of residence."
- Fr. G died in July 2008.

59. **Father H.**

- In 2002, Fr. H was in active ministry and was not being monitored despite that the Diocese was on notice of a history of allegations of Improper Conduct and Abuse against him. The Diocese had been alerted to problems with Fr. H's behavior sometime in the 1990s, transferring him from parish to parish after receiving the complaints.
- In 2000, the Diocese also received complaints from various members of the Clergy and nuns, one of whom resigned her position as principal of a church-run school

because of Fr. H's Improper Conduct there. The nun/principal had witnessed Fr. H repeatedly interacting inappropriately with young boys, showering some with gifts, taking them on trips without permission, meeting with them alone in his office, and corresponding with them via computer at all hours of the night. These Improper Conduct Allegations pre-date the Charter, and at the time, the Diocese spoke with Fr. H and gave him a warning but did not fully investigate, did not monitor him and did not impose any sanctions.

- In 2006, an alleged victim made a complaint against Fr. H, accusing him of over 100 incidents of abuse occurring during the mid-1980s, including masturbation and oral sex. Multiple witnesses corroborated many of the details of the complainant's allegations of Abuse and Improper Conduct, including that Fr. H would have the complainant (and other young boys) sit on his lap, took vacations with his family, and showered him with attention and expensive gifts. The complainant's allegations against Fr. H were consistent with the earlier complaints by members of the Clergy and nuns about Fr. H's behavior.
- The 2006 Abuse Allegation was referred to the DRB in June 2006, and the Diocese engaged an independent investigator to investigate the Abuse Allegations. The investigator found the complainant to be generally credible, though "unreliable as the sole complainant." In contrast, the investigator identified serious concerns with Fr. H's credibility, reporting "a fair amount of prevarication" during her interview with the priest, and "inconsistent answers that were contradicted by other witnesses as well as his own statements." Fr. H's inconsistent answers related to key issues, such as his relationship with the complainant's family and being warned about his Improper Conduct by Bishop Daily.
- Nevertheless, after "one of, if not the most intensive investigations ever conducted by the Diocesan Review Board," in October 2009, the DRB determined, by a 5 to 1 vote, that "there was not sufficient evidence of sexual abuse of a minor," based largely on its application of a heightened standard for finding a credible Abuse Allegation. Thus, despite the corroboration of many details in the complainant's account and the investigator's findings of the relative credibility of the victim and Fr. H, the DRB concluded that the Abuse Allegation was not credible, including because "no other victims were found and there was no corroboration of" the abuse itself.
- Fr. H was permitted to continue in ministry for many years, during which time the Diocese failed to comply with the DRB's recommendation in its November 2009 report (concerning its October 2009 determination) that he be supervised carefully and monitored.
- Two new Abuse Allegations were made against Fr. H in 2016 and 2017 of abuse that pre-dated 2002, which led to a new investigation. After that investigation was completed, the DRB concluded, in 2018, that both the original claim from 2006 and the new Abuse Allegations were credible, with the key difference between the evidence presented being that other victims had come forward.
- Based on the DRB's recommendation, in 2018, Bishop DiMarzio issued a decree prohibiting Fr. H from acting as a priest, having contact with minors or living in an ecclesiastical residence, and Fr. H accepted that decree. That decree was not publicized, however, and the fact that he was credibly accused of abuse was not

disclosed until 2019 when the Diocese first published its list of credibly accused Clergy.

60. Father I.

- Fr. I was placed on administrative leave in 2000, after being arrested for sexual abuse. The charges were ultimately dismissed, but additional evidence of wrongdoing came out involving other victims and the DRB and the Bishop ultimately found Abuse Allegations against Fr. I credible in 2004. However, it was not until 2012 that he was removed from the clerical state.
- The Investigation reveals only minimal and sporadic monitoring or other oversight of Fr. I by the Diocese during the period between when he was administratively removed from ministry and when he was laicized, even though during this period he, at times, lived among minors and worked as a teacher. In particular, for at least part of the period after he left active ministry but before he was laicized, Fr. I resided in a day care facility until at least 2002 and, at times, listed his occupation as “Teacher.” In addition, although the Diocese publicly disclosed that Fr. I was charged criminally, there is no record of the Diocese revealing his permanent removal from ministry before it released its list of credibly accused clergy in 2019.

61. Father J.

- In 2007, the Diocese received an allegation from a parish employee against Fr. J of inappropriate behavior with an 18- or 19-year-old male. The DRB hired an independent investigator, and in 2008, determined that Fr. J had engaged in “highly inappropriate behavior,” but not sexual abuse of a minor. In particular, Fr. J had given underage (but not under 18 years old) boys alcohol and had young volunteers visit his living quarters when he was dressed in only boxer shorts, exposing himself (perhaps inadvertently) to at least one of them.
- Fr. J retaliated against the complainant, firing her and her son, both of whom worked part time for the parish, because of her complaint. He also initially removed another person from parish organizations based on his initial suspicions that she was the complainant, only to reinstate her later.
- In 2008, as a result of the findings of its investigation, the DRB recommended counseling and a transfer to a different parish.
- After the DRB issued its recommendation, the Diocese only took limited action against Fr. J, transferring him and banning him from contact with the young man that was the subject of the first complaint, but it did not suspend him.
- The OAG Investigation did not find evidence that Fr. J was adequately monitored after the Diocese received the credible allegations of Improper Conduct. In 2011, other allegations of Improper Conduct with teens, including having young boys visit his living quarters and contacting them on Facebook, were made against him.
- In 2011, the Diocese’s Victim Assistance Coordinator documented her concern that the Diocese was not doing enough in the way of monitoring Fr. J’s behavior or ensuring that he follow the treatment that was recommended for him and that Fr. J was once again retaliating against people he suspected of complaining about his behavior.

62. Father K.

- In 2017, a pastor reported to Bishop DiMarzio his concerns regarding Fr. K, who the pastor said was acting inappropriately with young women, including by trying to physically force them into the confessional and giving them unsolicited hugs. In 2018, the Diocese received another report from a different cleric, in a supervisory capacity at Fr. K's rectory, stating that Fr. K was acting oddly and uncooperatively, came home at strange hours and refused to report his whereabouts. Other, similar reports were received by the Diocese throughout 2018 and into 2019.
- In August 2019, the Diocese received a formal report of Fr. K's inappropriate conduct with respect to two teenaged girls. Bishop DiMarzio issued a canonical Precept shortly thereafter, prohibiting Fr. K from, *inter alia*, ministry with minors, engaging in social media, visiting minors at their homes, or physical contact with minors. The case was assigned to the DRB later in August 2019 and an independent investigator was retained.
- Thereafter, in October 2019, Bishop DiMarzio granted Fr. K a personal leave of absence for medical reasons. The Diocese then received another report in December 2019 that Fr. K was interacting with youth near his prior parish.
- In September 2020, a different cleric sent an email to a senior diocesan official reporting additional inappropriate behavior by Fr. K, including spending time with young women. This senior diocesan official failed to share the report with the DRB, despite that the DRB was in the process of investigating Fr. K.
- Fr. K was assigned to a new parish in June 2021 and was granted general delegation. This decision by the DRB and the Bishop was made without their knowledge that a priest had reported Fr. K's violation of his Precept.
- Within several months, the pastor of the new parish contacted the Diocese's Victims Assistance Coordinator and Chancellor, reporting that Fr. K had been seen with a young woman at mass. Thereafter, in September 2021, the DRB recommended that Fr. K be removed from ministry until this latest reported conduct was investigated by the independent investigator. In October 2021, Bishop DiMarzio issued a temporary decree of suspension to Fr. K.
- Later that month, after receiving a verbal report from the investigator, which included the fact that Fr. K had been uncooperative in the investigation, the DRB concluded that Fr. K should be permanently removed from ministry and the clerical state. Bishop DiMarzio accepted this recommendation.
- When the decision to remove Fr. K from ministry was communicated to the pastors at Fr. K's former parishes, a pastor informed the Diocese of the prior report he had made to the senior diocesan official in September 2020 regarding Fr. K that the official had failed to pass on to the DRB. A Vos Estis complaint was thereafter filed alleging that the senior diocesan official deliberately withheld the report. In addition, after this incident was disclosed, two other members of the Diocese's senior leadership, who had been leading the Diocese's response to Abuse and Improper Conduct Allegations, resigned in early 2022. The Diocese voluntarily disclosed these events to the OAG.

- A Vos Estis investigation was conducted by a diocese in another state.¹⁷ That investigation concluded that the allegations that the report was deliberately withheld were “manifestly unfounded.”

vii. OAG’s Conclusions With Respect to Violations of Law

63. Pursuant to section 8-1.4 of the EPTL, the Diocese had an obligation to properly administer the Diocese. In order to fulfill such duties, the Diocese was required to, among other things: (a) promptly and thoroughly respond to the Abuse and Improper Conduct Allegations to avoid further harm to its parishioners and the students in its schools; (b) ensure that the Diocese had adequate policies and procedures in place designed to prevent the sexual abuse of minors and Vulnerable Persons; and (c) confirm that the Diocese’s Policies were followed.

64. In order to administer the Diocese properly and to ensure that its responses to the Abuse and Improper Conduct Allegations are handled in accordance with the Diocese’s Policies such that minors and Vulnerable Persons are protected from abusers, it is the OAG’s position that it is necessary that the Diocese: (a) implement remedial measures to avoid past failures and to materially adhere to its policies in the future; (b) reasonably monitor Clergy and others credibly accused of the sexual abuse of minors and other Improper Conduct; (c) reasonably address the risk that certain Clergy members could sexually abuse minors or engage in other Improper Conduct; (d) maintain accurate business records regarding the Abuse and Improper Conduct Allegations; and (e) ensure that the Diocese’s Clergy, Volunteers and Employees (as defined herein) are trained adequately to ensure compliance with the Diocese’s Policies and this Assurance.

65. However, the OAG concluded that, in certain cases, the Diocese failed to: (a) implement and enforce all necessary policies and procedures, including by ensuring full

¹⁷ The OAG offers no opinion on the sufficiency of the Vos Estis investigation or the reasonableness of its findings or conclusions, which, as noted, was conducted by a diocese from outside the State of New York.

compliance with the Diocese's Policies, to adequately respond to Abuse and Improper Conduct Allegations; (b) articulate and apply a clear and consistent standard of review in determining whether there was "sufficient evidence" to support an Abuse Allegation; (c) implement an effective system for monitoring Clergy against whom Abuse or Improper Conduct Allegations were made while those allegations were being investigated, or after the allegations were found credible; and (d) implement certain policies, including a whistleblower policy as required by N-PCL § 715-b and EPTL § 8-1.9(e) (the "Whistleblower Policy"), needed to ensure a prompt and thorough response to the Abuse and Improper Conduct Allegations.

II. THE AGREEMENT TO ENTER INTO THIS ASSURANCE

66. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15) in lieu of continuing the Investigation or commencing a statutory proceeding against the Diocese for alleged violations of N-PCL § 715-b, EPTL §§ 8-1.4 and 8-1.9(e) based on the conduct described above.

III. AGREEMENT TO RELIEF

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

A. Programmatic Relief

67. Since 2003, the Diocese has adopted and implemented the Diocese's Policies, a series of policies and procedures that incorporate the essential terms of the Charter and the Essential Norms along with other procedures, to respond to the Abuse Allegations, as well as analogous allegations against Employees and Volunteers. These efforts have improved the Diocese's response to such Abuse Allegations significantly. In connection with this Assurance and as is set forth more fully below, the Diocese agrees to continue to follow, maintain and comply with the Diocese's Policies and to adopt the further enhancements described herein to those Policies to

improve its response to the Abuse and Improper Conduct Allegations, as well as analogous allegations against Volunteers and Employees. In particular, the Diocese will ensure compliance with the requirements of Section III of this Assurance, to both address the concerns raised by the Investigation and to further the Diocese's goal of protecting children and expand that goal to protecting Vulnerable Persons. The Diocese also agrees to the appointment of an Independent Monitor who will, as more fully set forth below, monitor the Diocese's implementation of and compliance with the Diocese's Policies as enhanced by the requirements of this Assurance.

B. Appointment of an Independent Monitor

68. As it proposed to do when it initially approached the OAG concerning a voluntary resolution to the Investigation, the Diocese agrees to appoint an independent third party to monitor the Diocese's implementation of and compliance with the Diocese's Policies as defined in this Assurance (the "Independent Monitor").

69. Within thirty (30) days of the Effective Date of this Assurance, the Diocese will propose three candidates with expertise in sexual abuse prevention programs, or other relevant compliance programs, to serve as the Independent Monitor. The Independent Monitor will not have any business relationship with the Diocese or any business or familial relationship with any member of the Clergy in the Diocese. The OAG will, within thirty (30) days of receipt of the Diocese's proposed three candidates, select the Independent Monitor from the Diocese's list of proposed candidates; provided, however, that the OAG may deem any or all candidates to be unacceptable if it articulates a reasonable basis for that decision, including a lack of experience with sexual abuse prevention. If all three candidates are deemed unacceptable, the Diocese will have twenty-one (21) days to propose alternative candidates, and the OAG will have twenty-one (21) days to consider the three additional candidates. This process shall continue until a candidate acceptable to the OAG has been identified. The Diocese will retain and pay for the OAG-approved

Independent Monitor. The OAG shall have the right to review the Diocese's retention agreement with the Independent Monitor, which shall not create a confidential or privileged relationship between the Independent Monitor and any of the Parties.

70. The Independent Monitor's term will expire three years after the Effective Date of this Assurance or three years after the commencement of the monitorship, whichever is later (the "Monitorship Term"). The Independent Monitor will review the Diocese's implementation of and compliance with the Diocese's Policies as enhanced by the requirements of this Assurance by: (i) reviewing the Diocese's records regarding the Diocese's handling of Abuse and Improper Conduct Allegations, including analogous allegations against Employees or Volunteers, during the Monitorship Term; (ii) reviewing DRB records regarding its review and adjudication of Abuse and Improper Conduct Allegations, including analogous allegations against Employees or Volunteers, during the Monitorship Term; (iii) interviewing Diocesan personnel and members of the DRB; (iv) interviewing complainants who consent to speak to the Independent Monitor; and (v) reviewing the experience, qualifications and performance of the individuals serving, or appointed in the future, as the Director of the Office of Protection of Children and Young Adults, the coordinator for the Office of Safe Environment, the Victim Assistance Coordinator and the Clergy Monitor (all defined below) to ensure they satisfy the requirements of this Assurance and are capable of, and are, fulfilling their respective roles in connection with the Diocese's response to Abuse and Improper Conduct Allegations.

71. The Independent Monitor will prepare an annual report for each of the three years of the Monitorship Term that details the Diocese's compliance with the requirements of this Assurance (the "Report"). Each Report will also identify any issues that, in the Independent Monitor's judgment, need to be addressed in order to improve compliance with this Assurance or to improve the Diocese's Policies. Each Report will be provided to the OAG and the Diocese for

review and comment on the anniversary of the date when the Monitorship Term commenced. Within thirty (30) days after receipt of the Report, the Diocese and the OAG will provide their respective comments, if any, to the Independent Monitor. The Independent Monitor may consider and reflect the Diocese's and the OAG's comments in its final Report to the extent that the Independent Monitor deems appropriate in the exercise of its independent judgment. Within thirty (30) days of receipt of comments, if any, from the OAG and the Diocese, the Independent Monitor will send a finalized Report to both the OAG and the Diocese. The finalized Report will be made available by the Diocese to the public by prominently posting it on the Diocese's website within ten (10) business days of receipt of the finalized Report. Because the Report will be made public, the Independent Monitor will make reasonable efforts to maintain the confidentiality of personal information in the Report. Specifically, the Report will not include personally identifiable information about individual complainants or other specific details from which the identity of an individual complainant or the identity of a person against whom an Abuse or Improper Conduct Allegation has been made could be ascertained unless such information has been publicly disclosed by the Diocese.

72. In addition, during the first calendar year of the Monitorship Term, the Independent Monitor shall provide written reports to the OAG on the performance of the Director of the Office of Protection of Children and Young Adults, the coordinator for the Office of Safe Environment, the Victim Assistance Coordinator and the Clergy Monitor (all defined below) to ensure they are satisfying the requirements of this Assurance and are capable of, and are, fulfilling their respective roles in connection with the Diocese's response to Abuse and Improper Conduct Allegations. These reports, which can be by letter, shall be provided to the OAG within fourteen (14) days of the end of each of the first three quarters following the start of the Monitorship Term.

73. The Diocese will cooperate with the Independent Monitor by, among other things, providing it with all non-privileged written records created and/or required to be maintained in connection with the Diocese's Policies and by this Assurance, including records of all complaints, investigations, DRB meetings, and monitoring efforts during the Monitorship Term. The Diocese will provide such non-privileged records to the Independent Monitor promptly after they are created or finalized. The Independent Monitor will also have the right to review copies of any non-privileged documents and any other information from the Diocese or its Clergy, Employees and Volunteers that the Independent Monitor determines in its judgment are necessary to fulfill its role under this Assurance, and to speak with the Diocese and its Clergy, Employees and Volunteers in order to monitor compliance. However, to the extent the work product protection may apply to any such records, it will not be a basis for withholding that information from the Independent Monitor, but provision of such information to the Independent Monitor shall not be a waiver of that protection.

74. In order to assist the Independent Monitor in evaluating the Diocese's compliance with the terms of the Diocese's Policies and this Assurance, within thirty (30) days of commencement of the Monitorship, the Diocese shall provide the following information to the Monitor as of the Effective Date of this Assurance:

- a. a list of all Abuse or Improper Conduct Allegations, including analogous allegations against Employees and Volunteers, under review or investigation by the Diocese (or other tribunal affiliated with the Diocese), including the name of the accused Clergy, Volunteer or Employee, the status of the review or investigation, and the current monitoring plan (if any) for the accused; and
- b. a list of all the Abuse or Improper Conduct Allegations found credible by the DRB, including the name of the accused Clergy, a description of any decree or sanction

imposed, the date such decree or sanction was imposed, and the current monitoring plan (if any) for the accused Clergy.

The Diocese shall simultaneously disclose to the OAG the number of accused Clergy, Employees or Volunteers in each of the categories defined in paragraphs 74 (a) & (b), and the number who are subject to monitoring.

75. The Independent Monitor will maintain records and information that it receives from the Diocese as confidential, in accordance with the terms of a confidentiality agreement that will be subject to the approval of both the OAG and the Diocese. The confidentiality agreement will include a provision permitting the Diocese to submit a letter requesting a Freedom of Information Law (“FOIL”) exemption under New York Public Officers Law § 87(2)(b) or (d) for any such documents that are turned over to the OAG and, to the extent that documents in the Independent Monitor’s possession are covered by FOIL, to the Independent Monitor. The confidentiality agreement will provide an exception to permit the Independent Monitor to disclose any information the Independent Monitor determines relevant in connection with its public Report.

76. The Independent Monitor may, at its discretion, alert the Diocese and the OAG to issues that require more immediate attention than being reported in the Report.

77. In the event that the Independent Monitor, in its Report or otherwise, raises issues of the Diocese’s non-compliance with the Assurance, the Independent Monitor shall provide documents and/or evidence of such non-compliance to the Parties.

78. The Diocese and the OAG may each communicate with the Independent Monitor without including the other Party.

79. The Monitorship Term and all provisions of this Assurance relating to the Independent Monitor may be extended for no more than one year at a time, up to two additional years (for a maximum Monitorship Term of five years), if the Independent Monitor reasonably determines in

writing that the Diocese has materially breached the terms of the AOD or that an extension is necessary in order to ensure that the Diocese can successfully fulfill its obligations under the AOD.

C. The Bishop and Other Key Positions

80. The Diocese's Policies provide that the Bishop is responsible for oversight of the Diocese's Policies (its policies and procedures relating to prevention of sexual abuse of minors and other Vulnerable Persons). In order to assist the Bishop with his responsibilities, the Diocese's Policies will be amended to require that the DRB:

- a. Familiarize itself with the Diocese's Policies and the terms of this Assurance;
- b. Meet with the Independent Monitor and OPCYA Director (defined below) at least quarterly; and
- c. Prepare agendas and minutes of all DRB meetings held in connection with requests to review or provide feedback on the Diocese's Policies and maintain all documents distributed in connection with such meetings, preserving the records pursuant to the Record-Keeping Policies (as that term is defined below).

81. The Bishop will maintain familiarity with the Diocese's Policies, which are the subject of this Assurance, and must exercise oversight over those policies and act in good faith in enforcing and following such policies. To aid the Bishop in exercising oversight over the Diocese's Policies, in November 2021, the Diocese created a new position for a Director of the Office of Protection of Children and Young Adults ("OPCYA Director"), which is a new office the Diocese has established to combine and coordinate its sexual abuse prevention, victim assistance, and other related efforts. The Diocese established and filled the OPCYA Director position prior to the Effective Date of this Assurance. Any successor OPCYA Director appointed during the Monitorship Term will meet the qualifications described below in paragraph 82. The OPCYA Director will report directly to the Bishop, but may also report administratively to the Vicar

General, but shall not report to the Vicar General administratively if the Vicar General also is serving as Vicar for Clergy. The OPCYA Director may, from time to time, also hold another position at the Diocese; provided, however, that any other position that the OPCYA Director holds within the Diocese will not interfere with his or her ability to carry out the duties of the OPCYA Director, either because of the time required to fulfill those other duties or because there is a conflict of interest, except that the OPCYA Director may not hold any position in the Office of Victim Assistance Ministry, which assists victims of childhood sexual abuse by Clergy, Employees, or Volunteers.

82. The OPCYA Director will have at least five years of relevant experience in directly handling and responding to claims of sexual abuse against minors or Vulnerable Persons. The qualifications for the OPCYA Director will be demonstrated expertise in substantively addressing and preventing sexual or physical abuse; familiarity with best practices and compliance in the areas of codes of conduct and sexual abuse policies and protocols; experience in assessing, implementing or enforcing such policies and procedures; and experience with New York State and federal laws relating to privacy issues and abuse reporting requirements.

83. The OPCYA Director shall annually attend at least one professional development or continuing education training for professionals in the field of sexual abuse and sexual exploitation of minors and Vulnerable Persons to keep current with developments and best practices in the field. The Independent Monitor will annually assess whether the training satisfies the requirements of this Assurance.

84. The OPCYA Director will be responsible for:

- a. Monitoring compliance with the Diocese's Policies, as enhanced in accordance with the requirements of this Assurance; and notifying the Bishop, and, during the

term of the Monitorship, the Independent Monitor, promptly after the OPCYA Director becomes aware of noncompliance;

- b. Reviewing and recommending updates, if any, to the Diocese's Policies on a regular basis to improve the effectiveness of the policies as the Diocese recognizes that Safe Environment protocols must evolve to incorporate new best practices;
- c. Providing advice to the Bishop concerning the Diocese's compliance with the Diocese's Policies that are the subject of this Assurance related to the Abuse and Improper Conduct Allegations, and to the DRB when appropriate;
- d. Coordinating the monitoring of Clergy pursuant to the Monitoring Procedures described below;
- e. Maintaining copies of all records relating to the Diocese's Policies that are the subject of this Assurance pursuant to the Record-Keeping Policies;
- f. Overseeing the Diocesan Support and Safe Environment Offices defined below;
- g. Ensuring that the updates to the Diocese's website described in this Assurance are timely uploaded to the appropriate locations on the website; and
- h. Keeping up to date on best practices in preventing sexual abuse and responding to Abuse and Improper Conduct Allegations.

D. Commitment to Maintaining and Adequately Funding Committees and Offices to Address the Needs of Survivors and to Protect Minors and Other Vulnerable Persons

85. As part of its significant improvements over the past twenty years, the Diocese has established administrative offices and programs for the purpose of preventing sexual abuse of minors and supporting victim-survivors of that abuse. In connection with this Assurance, the Diocese agrees to continue to maintain the following offices (collectively, the "Diocesan Support and Safe Environment Offices") that it previously established to combat sexual abuse and respond

to the Abuse and Improper Conduct Allegations, and agrees to continue to provide each office with sufficient funding for it to fulfill its mission during the term of the Monitorship:

a. **The Office of Safe Environment (“OSE”).** The OSE was established by the Diocese in 2004 to oversee the Diocese’s policies and procedures designed to prevent abuse of minors, including by overseeing the following programs and procedures that the Diocese has put in place: (i) the training of Clergy, Employees, and Volunteers; (ii) the training of children to increase their awareness of improper behavior by adults; (iii) conducting background checks on Clergy, Employees, and Volunteers; and (iv) implementing codes of conduct for Clergy, Employees, and Volunteers to follow (as more fully defined above, the “Codes of Conduct”). The Diocese will continue to maintain the OSE and ensure that the OSE will:

- i. have a coordinator who reports directly to the OPCYA Director and who has at least three years of relevant experience to fulfill the OSE’s responsibilities, as detailed above;
- ii. train Clergy, Employees, Volunteers and children to foster a safe environment, by, among other things, maintaining and, when necessary, enhancing programs such as Virtus (for adults) and the Child Lures Prevention program (for children);
- iii. maintain continuing education for all Employees, Volunteers, and Clergy and will:
 1. Issue periodic bulletins addressing current issues;
 2. Require annual recertifications of abuse prevention training;and

3. Continue to conduct background searches. The Diocese has agreed to provide to the OAG copies of its background check procedures for review and approval. The Diocese also agrees to notify the OAG and the Independent Monitor of any updates to its background check and related procedures during the term of the Monitorship, which updates will be subject to the OAG's approval.
 - iv. Any background check that reveals sexual misconduct with minors shall preclude such person from commencing, or continuing to serve in, a position as an Employee, Volunteer or Clergy if that position would permit the individual to come into contact with minors or Vulnerable Persons, in compliance with procedures consistent with the Federal Credit Reporting Act, New York Credit Reporting Act, New York State Correction Law, and other applicable federal, state, and city human rights laws and regulations.
- b. **The Office of Victim Assistance Ministry.** The Diocese established the Office of Victim Assistance Ministry in 2004 to assist victim-survivors of childhood sexual abuse.
 - i. The Office of Victim Assistance Ministry provides, among other things, initial counseling, therapy referrals and other services to anyone alleging that they are a victim of sexual abuse by a member of the Clergy, Employee or Volunteer.

- ii. The Office of Victim Assistance Ministry is directed by the Victim Assistance Coordinator (“VAC”), who shall have at least three years of relevant experience in working with victims of sexual abuse.
- iii. The Office of Victim Assistance Ministry will continue to facilitate the Survivor’s Advisory Board, which provides advice to the Bishop about responding to the needs of victim-survivors by developing new resources and providing outreach, for the duration of the Monitorship. The Survivor’s Advisory Board is composed of victim-survivors of sexual abuse and others with relevant professional training.
- iv. The Office of Victim Assistance Ministry will continue to facilitate the provision of therapy and other services for victims of sexual abuse as minors and as Vulnerable Persons, as well as for parishes, in accordance with its current policies and guidelines, for the duration of the Monitorship Term. Such services will include, but not be limited to, the services it currently provides, such as the use of:
 - 1. A Healing Intervention team;
 - 2. Support groups; and
 - 3. Therapy referrals (including by continuing its current practice of paying for therapy for victims when deemed appropriate by the VAC).

- v. No one serving in the Office of Victim Assistance may have any substantive role in the Diocese's or DRB's investigation of any Abuse or Improper Conduct Allegations.

86. During the Monitorship Term, the Diocese agrees to notify the Independent Monitor and the OAG of any material changes contemplated to the activities of or services provided by the Diocesan Support and Safe Environment Offices and shall not implement any such material changes without the OAG's approval. In the event that the Diocese makes any material changes to these activities or services after the Monitorship Term has ended, it agrees to prominently post a description of such changes on its website.

E. Commitment to Continue and Improve the Diocese's Policies Pertaining to Safe Environment

87. Since 2002, the Diocese has taken certain affirmative steps that exceed the requirements in the Charter and Essential Norms to prevent and resolve the Abuse and Improper Conduct Allegations.

88. For instance, the Diocese has implemented a thorough reporting and investigation process for Abuse and Improper Conduct Allegations, which currently provides that:

- a. When the Diocese receives an Abuse or Improper Conduct Allegation, outside of the priest-penitent relationship of the Sacrament of Reconciliation, that Abuse or Improper Conduct Allegation is immediately reported to the "Reporting Line," a telephone line staffed by an independent attorney. The independent attorney staffing the Reporting Line then records the Abuse or Improper Conduct Allegation on a form ("Allegation Report").
- b. The independent attorney immediately sends all Allegation Reports, regardless of the date of the alleged conduct, to the District Attorney's office that is local to where the incident occurred, the Bishop, and the Victims Assistance Coordinator.

- c. If the Abuse or Improper Conduct Allegation is made against a living Clergy member, other than one who has been relegated to a life of prayer and penance, the Diocese forwards the Abuse or Improper Conduct Allegation to the Bishop to determine if that Abuse or Improper Conduct Allegation at least seems to be true and, if so, the Bishop initiates a canonical inquiry and forwards the case to the DRB. The DRB consists of at least five members, one of whom “should have particular expertise in the treatment of the sexual abuse of minors.” (Charter ¶ 5.) The DRB currently includes law enforcement, clergy, family law attorneys, medical and mental health experts, and a survivor of abuse.
- d. After receiving the referral, the DRB conducts an independent evaluation of all Abuse or Improper Conduct Allegations. If the accused Clergy member denies the alleged Abuse or Improper Conduct, the Diocese retains an independent professional investigator to conduct a full investigation (the “DRB Investigation”).
- e. Once the DRB Investigation is complete, the DRB determines whether the Abuse or Improper Conduct Allegation is deemed credible and makes a recommendation to the Bishop in writing regarding whether the Clergy member should be permitted to remain in active ministry.
- f. The Bishop then determines whether to remove the Clergy member from active ministry, considering the DRB’s recommendation and supporting evidence. The Investigation confirmed that, in almost every case where the DRB has recommended removal, the Bishop has agreed with the DRB’s recommendation and removed the Clergy member from active ministry.
- g. The Bishop administratively removes the Clergy member from active ministry by issuing a canonical precept that: (i) prohibits the Clergy member from publicly

celebrating Mass; (ii) prohibits the Clergy member from exercising any public ministry; (iii) may require the Clergy member to depart from his place of residence; (iv) may reduce the Clergy member's remuneration; and (v) includes any other restriction or action that the Bishop deems appropriate.

- h. If the Bishop administratively removes the Clergy member from ministry for abuse of a minor, the Diocese publicly announces that decision and the basis for it, including through online press releases and adding the Clergy member's name to the list of credibly accused Clergy the Diocese maintains online. A representative of the Diocese also visits the parish where the Clergy member had been assigned and reads a letter informing the congregation of the decision and the basis for it. When the Diocese's representative visits to make those announcements, the Diocese also provides on-site pastoral support through the Healing Intervention Team, and other support resources for parishioners.

89. To further enhance the Diocese's response to the Abuse or Improper Conduct Allegations, including analogous allegations against Employees and Volunteers, the Diocese has determined to modify the Diocese's Policies, which are the subject of this Assurance, as set forth in this Section. The Diocese has determined to maintain the policies described above in footnote 5, and adopt certain amendments to its policies, so that the Diocese's Policies require the Diocese to:

- a. Include Vulnerable Persons within the scope of individuals protected and covered by the Diocese's Policies;
- b. Include provisions concerning responding to Improper Conduct Allegations within the scope of the Diocese's Policies;
- c. Respond to any complaints received through the Reporting Line, or corresponding online form and email address, from an alleged victim of abuse or his or her

representative within five (5) business days of receipt of the complaint by the Diocese;

- d. Continue to maintain the Reporting Line staffed by an independent attorney;
- e. Expand methods to receive complaints against Clergy, Employees and Volunteers by, among other things: (1) creating an online form for receiving complaints, with appropriate confidentiality protections, available in an easily accessible and well-publicized part of the Diocese's website; (2) posting information in a prominent place at parishes, schools and on the Diocesan website that provides the phone number and web address to make complaints; (3) ensuring that all complaints that are received, whether electronically, orally or in written form, are handled in a manner that protects the confidentiality of the complainant and the alleged victim, such that the complaints are disclosed only to those conducting the investigation and review of the Abuse or Improper Conduct Allegation; (4) ensuring that the Diocesan website and all complaint forms, whether electronic or in hard copy, clearly state that all complaints are confidential and that there will be no retaliation made against any complainant who reports information in good faith; and (5) continuing to explore and implement new methods of communication regarding the Diocese's complaint process that may better serve the objectives set forth in this section;
- f. Require Clergy, Employees, and Volunteers to instruct complainants to report all Abuse or Improper Conduct Allegations they learn about through any manner, unless the report would violate the priest-penitent relationship of the Sacrament of Reconciliation, to the Reporting Line or corresponding online form;

- g. Ensure that all Diocesan officials, Clergy, Employees and Volunteers within the Diocese are made aware that they are required to provide all Abuse or Improper Conduct Allegations, whether made orally or in writing, to the Reporting Line;
- h. Require all Abuse or Improper Conduct Allegations to be referred to the DRB within five (5) business days of the Bishop's determination that the Abuse or Improper Conduct Allegation at least seems to be true; provided, however, that such determination by the Bishop shall be made within twenty (20) business days of receipt of the complaint by the Diocese;
- i. Ensure that the Diocese's Policies require that all Diocesan officials, Clergy, Employees and Volunteers provide any material information, including but not limited to documents that they obtain that relate to Abuse or Improper Conduct Allegations, to the DRB promptly;
- j. Require publication in the Diocesan newspaper, *The Tablet*, and posting in all schools and parishes in a prominent location, no less than four (4) times per year, as well as on the Diocesan website, a statement urging victims of sexual abuse and improper conduct to report such crimes to the Diocese (through the procedures set forth herein) and local law enforcement; and
- k. Require that when the Bishop administratively removes a Clergy member from public ministry as set forth in paragraph 86(g) of this Assurance, the removal and other restrictions imposed by the Bishop remain in place indefinitely unless a canonical trial results in a finding in favor of the Clergy member or other credible evidence exonerating the Clergy member is found and presented to the Bishop. If there is a determination made to lift a prohibition on public ministry or any other

restrictions imposed by the Bishop, the reasons for such determination shall be set forth in writing and the determination shall be publicized by the Diocese.

90. When the Bishop receives an Abuse or Improper Conduct Allegation against a living Clergy member that he determines at least seems to be true, other than one who has been relegated to a life of prayer and penance, the Bishop, or a designated Employee of the Diocese working at the Bishop's direction, will implement and document in writing reasonable precautionary measures designed to prevent the Clergy member from committing abuse during the pendency of the independent investigation as needed, taking into consideration any requests for confidentiality from law enforcement and the nature of the Abuse or Improper Conduct Allegation. The Diocese will further make reasonable efforts to monitor the Clergy member's compliance with the precautionary measures, if any, put in place, will document and report any noncompliance during the pendency of the independent investigation to the DRB, and will maintain such documentation pursuant to the Record-Keeping Policies (defined below).

91. If the Diocese receives an Abuse or Improper Conduct Allegation against a Clergy member who is deceased, who has been laicized, who has been relegated to a life of prayer and penance approved by the DDF, or an individual who is included in the list of Priests With Substantiated Claims of Abuse published on the Diocese's website (collectively, a "Sanctioned Clergy Member"), the Diocese shall determine whether to appoint an independent investigator to investigate the Abuse or Improper Conduct Allegation and shall document the reasons for its determination. In making that determination, the Diocese shall consider, among other things, whether: (a) the Abuse or Improper Conduct Allegations implicate personnel in addition to the Sanctioned Clergy Member, including by alleging that such personnel failed to monitor the Sanctioned Clergy Member or failed to adequately respond to Abuse or Improper Conduct Allegations made against that Sanctioned Clergy Member; or (b) the investigation is likely to

provide material information that would improve the Diocese's Policies. The Diocese may also, in its discretion, consider other factors in making this determination. In the event that the DRB determines that an investigator should be appointed, the provisions set forth in paragraphs 88-90 and 92 shall apply, but the timing of the appointment of the investigator and the investigation shall be within the discretion of the Diocese, provided that the investigation is conducted in a reasonably timely manner.

92. The Diocese will require that the DRB conduct independent investigations of all Abuse or Improper Conduct Allegations against a living Clergy member, other than one who has been relegated to a life of prayer and penance (except those individuals to whom this paragraph applies pursuant to paragraph 91 above) or who has admitted the alleged Abuse. In connection with such investigations, the Diocese will ensure that the Diocese's Policies either currently require or are updated to require that, subject to sub-paragraph (f):

- a. The DRB Investigation is commenced, *i.e.*, the investigators are retained, within five (5) business days after the referral, absent extenuating circumstances;
- b. The DRB Investigation is performed in a timely manner, with the goal being to complete the investigation in nine months or less;
- c. The DRB Investigations shall be conducted independently by the professional investigator, *i.e.*, the professional investigator shall conduct the investigation without any personnel from the Diocese conducting or participating in the investigation other than to facilitate the logistics of the investigation or site visit, or to provide victim support, when specifically requested by the victim;
- d. The DRB meets approximately monthly to receive progress reports of all pending DRB Investigations or as otherwise required to timely address the then-current workload;

- e. The DRB requires investigators to inform the DRB of the progress in the DRB Investigation at least once monthly in advance of the DRB's monthly meetings;
- f. If any of the above timelines cannot be met, the reason for the extension must be documented in writing. If the investigator requests an extension, the DRB will require the investigator to inform the DRB in writing of the reasons that additional time is needed, which the DRB will evaluate before determining whether an extension is warranted. If an extension is granted, the DRB will document the reasons for its decision and the length of extension needed;
- g. At the conclusion of the DRB Investigation, the DRB will independently evaluate the evidence obtained and will determine whether the Abuse or Improper Conduct Allegations are credible. In weighing the evidence, the DRB will apply the following standards:
 - i. an Abuse or Improper Conduct Allegation will be deemed to be credible if the DRB Investigation finds that the evidence supporting the Abuse or Improper Conduct Allegation is worthy of being believed, which may be a lower standard of proof than the civil legal standard of the preponderance of the evidence;
 - ii. that there is only one Abuse or Improper Conduct Allegation against the Clergy member or only one complainant who has made an Abuse or Improper Conduct Allegation is not a sufficient basis alone for determining that the Abuse or Improper Conduct Allegation is not credible; and
 - iii. All evidence must be weighed against all other evidence reviewed by the DRB.

- h. The DRB will document its findings and make a recommendation in writing to the Bishop regarding its assessment of the sufficiency of the evidence, the Clergy's suitability for ministry in light of the Abuse or Improper Conduct Allegation and any other aspect of the case. The DRB will include in its written recommendation the basis for the recommendation and the evidence in support, as well as a statement from any members of the DRB who do not concur in the recommendation and the reasons for their dissent. Any recommendation by the DRB to find an Improper Conduct Allegation credible will, in addition to any applicable provisions of this paragraph, also be addressed by the provisions set forth in paragraphs 97 and 100 *infra*.
- i. The DRB will take minutes of all its meetings that record the matters discussed at its meetings and the rationale for the actions taken. The minutes of the DRB meetings will be maintained pursuant to the Record-Keeping Policies.
- j. No attorney or law firm that has provided legal services to the Diocese in connection with the defense of claims of sexual abuse of minors will have any involvement on behalf of the Diocese with the DRB Investigations, determinations or recommendations, except to assist the Diocese in ensuring that the policies, procedures and standards set forth herein for the DRB are implemented or provide background or other information to the DRB at its request. For the avoidance of doubt, nothing in this section will prohibit such an attorney or law firm from advising the Diocese on its response to the DRB's recommendations or with respect to this Assurance or the Monitorship.
- k. After receiving and reviewing the DRB's recommendations, the Bishop will, within twenty (20) business days, absent extenuating circumstances that are documented

in writing, make his written determination as to whether he agrees with the DRB's recommendations.

- l. If the Bishop determines that an Abuse Allegation is credible, he: (1) will prohibit the accused Clergy member from exercising any public ministry; (2) may require that the Clergy member vacate any living quarters owned or controlled by the Diocese and, in making such determination, will consider whether the Clergy member is living in a parish or other place where minor children or other Vulnerable Persons periodically visit; and (3) will publicize, in writing, on the Diocese's website and at each parish and school where the accused was assigned his own determination, the bases therefore, and whether that determination was consistent with the DRB's recommendation. The Diocese will continue to provide written notice of the Bishop's determination to the parish of the assignment of the priest by letter to be "read by the Episcopal Vicar," or other representative of the Bishop, as discussed in paragraph 28(h) above, and will publicize such letter in the parish bulletin or will provide it to the parish pastoral council.
- m. In the event that the Bishop determines not to follow the DRB's recommendations, the Bishop will respond in writing to the DRB stating the basis for his determination and will give consideration to: (a) whether to institute reasonable and appropriate precautionary measures; and (b) whether to request that additional investigation be conducted. The response will be provided to the DRB, the OPCYA Director, the Office of Victim Assistance Ministry and, during the term of the Monitorship, the Independent Monitor. In addition, the written response the Bishop provides to the DRB, or the DRB's written recommendation, shall be posted on the Diocese's website.

93. The Diocese and its OPCYA Director will ensure that all current members of the DRB are trained on the procedures and standards set forth in paragraph 92 hereof within two months of the Effective Date of this Assurance. All persons who join the DRB after the Effective Date of this Assurance will be trained on the DRB's policies and procedures, including, but not limited to, the policies and procedures set forth in paragraph 92 hereof, within two months of being appointed to the DRB.

94. In the event that a referral is made to the DDF, the Diocese's processes and procedures with respect to the referral will be governed by Church Law. If the results of such referral, including any canonical trial, affect the ability of the Clergy member to publicly minister or to have any contact with minors or Vulnerable Persons, the Bishop shall ensure that the results of the trial are publicized on the Diocese's website and at each parish and school where the accused was assigned. Records of any such referral, including submissions, decisions and transcripts, if any, shall be maintained in accordance with the Record-Keeping Policies. During the Monitorship Term, the Diocese agrees to provide the Monitor with a list of Clergy who have been referred to the DDF during the Monitorship Term and the date and outcome of such referrals.

95. The Diocese currently requires all Clergy, Employees, and Volunteers to sign Codes of Conduct that require them to, among other things, report "any suspected cases of abuse or neglect of children." To further enhance the Diocese's response to the Abuse and Improper Conduct Allegations, the Diocese will update its Codes of Conduct for all Clergy, Employees, and Volunteers (the "Codes of Conduct") so that they:

- a. Expressly prohibit all forms of sexual misconduct and Improper Conduct, including, but not limited to, prohibiting: (i) improper physical contact with minors or other Vulnerable Persons; (ii) giving extravagant gifts to minors or other Vulnerable Persons and/or inappropriate gifts that reveal favoritism towards a

single or small group of minors; (iii) having unaccompanied minors or other Vulnerable Persons as guests in Clergy's private living and/or sleeping quarters (in contrast, the Codes of Conduct may permit having minors as guests in common spaces in a rectory, such as a dining room); (iv) providing alcohol or drugs of any kind (other than drugs prescribed by a health care provider) to minors or other Vulnerable Persons; (v) taking unrelated minors or other Vulnerable Persons on trips without either parental consent or other adults being present; (vi) viewing pornographic materials on any Diocesan property; and (vii) showing pornographic materials to minors or other Vulnerable Persons;

- b. Include a policy regarding the use of technology by all Employees, Volunteers and Clergy, including provisions that will grant the Diocese the ability to inspect, review and access all matters on any systems maintained or provided by the Diocese, including Employee, Volunteer and Clergy emails and computer systems, and will set forth guidelines on the proper use of social media, cell phones and texts; and
- c. Require Clergy to promptly report any violations of the Codes of Conduct related to potential sexual misconduct, including Improper Conduct, involving minors and other Vulnerable Persons to the OPCYA Director, or other persons reporting directly to the Bishop. All such reports will be documented and maintained consistent with the Record-Keeping Policies.

96. The updated Codes of Conduct will be prominently posted on the Diocese's website, together with the Diocesan SAP Policy, and in publicly accessible places at the parishes and schools in the Diocese.

97. To further enhance the Diocese's response to the Abuse and Improper Conduct Allegations, the Diocese will maintain and enhance restrictions on Clergy against whom credible Improper Conduct Allegations are made, even if there are no Abuse Allegations (the "Code Violation Procedures"). The Code Violation Procedures will require that Clergy against whom credible Improper Conduct Allegations are made be subject to appropriate consequences, including, potentially, monitoring in accordance with the Monitoring Procedures set forth below, and other reprimands or restrictions as appropriate.

98. All credible Improper Conduct Allegations must be documented and records maintained consistent with the Record-Keeping Policies. The nature of the violation, the consequences imposed and the rationale for that decision must all be documented.

99. To further enhance the Diocese's response to allegations of sexual abuse of minors and Vulnerable Persons by Employees and Volunteers, the Diocese has determined to and will maintain and enhance its current policies on reporting and responding to all allegations of Abuse or Improper Conduct by Employees and Volunteers by:

- a. Continuing to report all such allegations, regardless of the date of the alleged conduct, to the District Attorney's office local to where the alleged misconduct is alleged to have occurred and to the OPCYA Director, who will report recent cases to the Special Victims Unit of the New York City Police Department if the conduct is alleged to have occurred within New York City;
- b. Continuing to require the removal of any Employee or Volunteer who is determined, after an appropriate investigation, to have committed sexual abuse involving a minor or Vulnerable Person;

- c. Continuing to impose consequences on any Employee or Volunteer who commits a Code of Conduct violation involving minors or Vulnerable Persons, but who has not committed sexual abuse involving a minor or Vulnerable Person; and
- d. Following the Monitoring Procedures (defined below) with respect to any Employee or Volunteer who violates the Code of Conduct involving a minor or Vulnerable Person, but who is not removed.

100. To further enhance the Diocese's response to Abuse or Improper Conduct Allegations, including analogous allegations against Employees and Volunteers, the Diocese has implemented additional measures for monitoring Clergy, Employees, and Volunteers: (i) against whom credible Abuse or Improper Conduct Allegations have been made, including analogous allegations against Employees or Volunteers; and (ii) who continue to work for the Diocese or to whom the Diocese continues to pay or provide benefits (the "Monitoring Procedures"). With respect to Employees and Volunteers, the Diocese will monitor activities the Employees or Volunteers engage in during the course of their employment or volunteer work with the Diocese as determined by the Diocese to be appropriate, if any, in response to the Code of Conduct violation at issue. With respect to the Clergy, the Diocese has determined to and will:

- a. Continue to require the Clergy member to establish contact with a designated Clergy member associated with the Diocese on a monthly basis;
- b. Establish a new position (or multiple positions) for an individual in the Office of Protection of Children and Young Adults to regularly monitor restricted Clergy members ("Clergy Monitor"), to be filled within one month of the Effective Date of this Assurance. The Clergy Monitor will have law enforcement or counseling experience, as well as expertise in addressing and preventing sexual and physical abuse, familiarity with best practices, codes of conduct, and issues relating to

privacy and abuse reporting requirements, and will be specifically trained to perform such monitoring;

- c. Have the Clergy Monitor develop an individualized prevention plan for each Clergy member to be monitored (the “Monitoring Plan(s)”), subject to the Bishop’s approval, that addresses risk assessment to the extent feasible, which may include, for example, periodic social media searches, informing local law enforcement of the restricted Clergy’s location, visiting the Clergy member on a periodic basis and directing the restricted Clergy to inform the Diocese of his activities, including travel, and specific contacts near his location. In preparing each Monitoring Plan, the Clergy Monitor will consider, for example: (a) where the Clergy member is living, including the extent of potential exposure to minors and Vulnerable Persons; (b) if the Clergy member resides in a facility where there are others who would be alerted to any violations by the Clergy member; (c) whether the Clergy member is employed and the nature of the employment; (d) whether the Clergy member travels; (e) the Clergy member’s contacts with the community in which he lives to the extent reasonably ascertainable; and (f) any other factors relevant to analyzing whether the Clergy member will come into contact with minors or Vulnerable Persons;
- d. Ensure that the Monitoring Plans are in writing and that the Clergy Monitor will monitor clergy in accordance with the Monitoring Plan prepared for that Clergy member; and
- e. Keep and maintain records of all monitoring consistent with the Record-Keeping Policies.

101. The Diocese has determined to and will maintain a Whistleblower Policy that prohibits retaliation by Diocesan officials, Employees, Volunteers, and Clergy for good faith complaints and other Abuse or Improper Conduct Allegations concerning minors and Vulnerable Persons made to the Diocese or any Employee within the territory of the Diocese.

102. In addition, the Diocese will ensure that:

- a. A link to the Whistleblower Policy is posted prominently on the Diocese's website.
- b. The Diocese's website contains notices on pages related to the Diocese's response to sexual abuse of minors or Vulnerable Persons that all complaints will be treated confidentially and only disclosed to those conducting the investigation and review of the Abuse or Improper Conduct Allegations, and that no retaliation by the Diocese, its Employees, Volunteers or anyone subject to its control, including Clergy at individual parishes or schools, will be permitted against anyone who, in good faith, makes a complaint or reports abuse or violations of the Diocese's Policies.
- c. The Whistleblower Policy and the notices referred to in this section are posted prominently in each parish and school under the Diocese's jurisdiction.

103. The Diocese has determined to and will update the portion of its website devoted to the protection of children and Vulnerable Persons from sexual abuse to include, without limitation, the notices about the Whistleblower Policy referred to above and an electronic form on the website on which to submit complaints, as well as an email address and phone number to report such complaints.

104. In an effort to improve the comprehensiveness and accessibility of the files the Diocese maintains, the Diocese has determined to and will update its record-keeping policies (the "Record-Keeping Policies") as follows:

- a. The Diocese will implement an electronic record-keeping and tracking system to document and manage Abuse or Improper Conduct Allegations, including analogous allegations against Employees and Volunteers, and these records will be searchable and accessible to all appropriate governing units within the Diocese (with appropriate confidentiality provisions limiting who within a given governing unit can access the system).
- b. Going forward, the Diocese will make reasonable efforts to maintain all records relating to the Diocese's Policies and any Abuse or Improper Conduct Allegations until the death of the accused or for a period of ten years (whichever is longer), including, without limitation, all records required to be made or kept by this Assurance.
- c. The records will be indexed by, among other things, the date of the alleged violation, the Clergy member or other person against whom the Abuse or Improper Conduct Allegation was made, and the parish, school or other entity with which the alleged abuser was associated.

105. As described above, the Diocese currently reports all Abuse or Improper Conduct Allegations it receives, regardless of the date of the alleged conduct, to the office of the District Attorney in the jurisdiction where the alleged abuse is alleged to have occurred. Furthermore, when the Diocese learns that credibly accused Clergy are moving to a location within the territory of another diocese, it is the Diocese's practice and procedure to inform that diocese of the credible accusation made against the Clergy member. To further enhance the Diocese's response to the Abuse and Improper Conduct Allegations, the Diocese will maintain and enhance its policies with respect to reporting abuse, issuing referral letters to employers, and making other disclosures (the "Reporting and Referral Policies") so that the Reporting and Referral Policies require:

- a. Expanded distribution of the Allegation Reports, so that the Allegation Reports, regardless of the date of the alleged conduct, are distributed not only to the local District Attorney's office, the Bishop, and the Victim Assistance Coordinator, but are also distributed to the OPCYA Director and, during the Monitorship Term, to the Independent Monitor and the OAG.
- b. All referral letters or references for Clergy, Employees, or Volunteers to be accurate and complete.
- c. If a credible Abuse or Improper Conduct Allegation, including an analogous allegation against an Employee or Volunteer, has been made against the Clergy, Employee, or Volunteer, any referral letter or reference must note that Abuse or Improper Conduct Allegation.
- d. Continuing the Diocese's policy wherein if the Diocese learns that a Clergy member against whom a credible Abuse or Improper Conduct Allegation has been made is moving outside the territory of the Diocese, the Diocese alerts the diocese in the area to which the Clergy member is moving of the move and that the Clergy member has been credibly accused.
- e. Maintaining and keeping current and available on its website the list of credibly accused Clergy. In accordance with the Diocese's current practice, the list shall, at a minimum, disclose the name of the cleric, date of ordination, all assignments, the cleric's status and, if deceased, the date of death.

106. To the extent required under this Assurance, the Diocese's Policies, specifically the Diocesan SAP Policy, the Codes of Conduct, the Code Violations Procedures, the Whistleblower Policy, the Monitoring Procedures, the Record-Keeping Policies and the Reporting and Referral Policies, shall be updated, enhanced or adopted, within thirty (30) days of the Effective Date. At

that time, the Diocese's Policies shall be provided to the OAG, which shall have no more than thirty (30) days to review for confirmation that the policies meet the requirements of the Assurance. Promptly upon the OAG's confirmation, or expiration of the OAG's 30-day period for review, whichever is sooner, the Diocese shall post the Diocese's Policies, as updated, enhanced or adopted, on the Diocesan website.

107. During the Monitorship Term, the Diocese will notify the Independent Monitor and the OAG of any changes to the Diocese's Policies and will not make any material modifications if, after receipt of such notice, either the Independent Monitor or the OAG makes a reasonable objection to the proposed modifications. In the event that the Diocese makes any material changes to the Diocese's Policies after the Monitorship has ended, it agrees to prominently post a description of such changes on its website.

F. Religious Orders

108. From time to time, the Diocese entrusts individual parishes or schools within its territory to Religious Orders (including, but not limited to, Institutes or Pontifical Congregations), which then operate those individual parishes or schools. To effectuate those entrustments, the Diocese enters into agreements with the Religious Orders that contain requirements that the Religious Orders must follow when operating within the territory of the Diocese.

109. Where there are such agreements, the Diocese agrees that it will seek to add a provision to its agreements with Religious Orders within its territory that requires the Religious Orders to:

- a. Report all allegations of Abuse against minors or Vulnerable Persons that are committed by Religious Order clergy, employees, or volunteers of the parish(es) or school(s) that are the subject of the agreement at issue to the Diocese and to law enforcement, as well as to the appropriate individuals at the Religious Order;

- b. Use its own internal investigation and review board process;
- c. Remove all Religious Order clergy credibly accused of sexual abuse of a minor or Vulnerable Person from public ministry within the territory of the Diocese; and
- d. Document its investigations, determinations and other actions related to the allegations described in subpart (a) and review in subpart (b), and to provide copies of all such documentation to the Diocese within thirty (30) days of the close of the investigation. The Diocese will publish the name of all Religious Order clergy credibly accused of sexual abuse of a minor or Vulnerable Person that served in the Diocese, as reported to it by the Religious Order, in a prominent place on the Diocese's website within a reasonable time of receipt of such information.

110. The Diocese will retain the agreements with the Religious Order and the documentation required in paragraph 109 consistent with the Record-Keeping Policies.

111. All members of a Religious Order who work, teach, or minister in a ministry of a diocesan parish or of the Diocese itself shall be required to agree to the Diocese's Codes of Conduct applicable to Diocesan Clergy, Employees and Volunteers in similar roles or positions. The Victims Assistance Coordinator of the Diocese and other means available to victims to make Abuse or Improper Conduct Allegations shall be available to report such allegations against members of Religious Orders working in or for the Diocese ("Religious Order Allegation(s)"). The Diocese shall proceed as follows with respect to such Religious Order Allegations:

- a. The Diocese shall report any Religious Order Allegation that is an Abuse Allegation to the appropriate district attorney and to the applicable Religious Order when the Religious Order is not otherwise on notice of the allegation (through the filing of a civil lawsuit or otherwise).

- b. If the Diocese receives a Religious Order Allegation that the Bishop or his designee determines at least seems to be true, the Bishop or his designee shall implement appropriate precautionary measures and monitoring during the pendency of any investigation by the Religious Order with respect to the accused's activities at Diocesan parishes, schools and other places under Diocesan control. In implementing such precautionary measures and monitoring, the Bishop or his designee shall follow the applicable procedures and criteria set forth in paragraph 89-90 above, in coordination with the Religious Order.

G. Resolution of Civil Suits

112. The Diocese agrees that it will continue not to include confidentiality requirements in any settlement that it enters into in civil litigation brought by private litigants or other settlement concerning Abuse or Improper Conduct Allegations, unless at the request of the victim-survivor.

H. Clergy Assistance Program

113. The Diocese will explore the need for and feasibility of a Clergy Assistance Plan that provides Clergy with an ability to seek help in times of need or personal crisis, including from an outside provider and in a manner that provides anonymity, if desired.

IV. MISCELLANEOUS

A. Subsequent Proceedings

114. In any subsequent investigation, civil action, or proceeding by the OAG to enforce this Assurance, for breach of the terms of the Assurance, or if the Assurance is voided pursuant to paragraph 121, *infra*, the Diocese expressly agrees and acknowledges:

- a. that any statute of limitations or other time-related defenses, if any, are tolled from and after the Effective Date of this Assurance until the termination of the Monitorship or the date of the claimed breach of the terms of the Assurance;

- b. that the OAG may use statements, documents or other materials produced or provided by the Diocese prior to or after the Effective Date of this Assurance, except as to statements, documents or other materials produced or provided pursuant to the Non-Waiver Agreement (“Confidential Information”). All such Confidential Information will be returned or destroyed in accordance with the Non-Waiver Agreement, which will continue to govern said Confidential Information; and
- c. that any civil action or proceeding must be adjudicated by the courts of the State of New York or the federal courts located within the State of New York, and that the Diocese irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

115. If a court of competent jurisdiction determines that the Diocese has breached the terms of the Assurance, the Diocese will pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including, without limitation, legal fees, expenses, and court costs.

B. Effects of Assurance

116. All terms and conditions of this Assurance will continue in full force and effect against any successor, assignee, or transferee of the Diocese.

117. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

118. Nothing contained herein will be construed as to deprive any person of any private right under the law.

119. Any failure by the OAG to insist upon the strict performance by the Diocese of any of the provisions of this Assurance will not be deemed a waiver of any of the provisions hereof, and

the OAG, notwithstanding that failure, will have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Diocese.

C. Communications

120. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 24-043, and will be in writing and will, unless expressly provided otherwise herein, be given by hand delivery, express courier, or electronic mail at an address designated in writing by the recipient, followed by postage-prepaid mail, and will be addressed as follows:

If to the Diocese, to:

Robert J. Giuffra, Jr., Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498

Richard J. Cea, Esq.
Wingate Kearney & Cullen, LLP
111 John Street
Suite 1040
New York, NY 10038

If to the OAG, to:

James Sheehan, Charities Bureau, Chief
Office of the Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

or in his/her absence, to the person holding the title of Bureau Chief of the Charities Bureau in the Office of the Attorney General.

D. Representations and Warranties

121. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Diocese and its agents and representatives and the OAG's own factual investigation as set forth in Section I.F. above. The Diocese represents and warrants that neither it nor its agents and representatives has made any material representations to the OAG

that are knowingly inaccurate or misleading. If any such material representations by the Diocese or its agents or representatives are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

122. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Diocese in agreeing to this Assurance.

123. The Diocese represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

E. General Principles

124. This Assurance shall remain in effect during the Monitorship Term, unless the Parties agree in writing to modify the term.

125. Nothing contained in this AOD, and no act to be performed hereunder, shall (a) require the Diocese to waive any attorney-client privilege, work-product protection, or common interest/joint defense privilege, or (b) limit the Diocese's ability to assert the application of any exception to New York State's Freedom of Information Law (FOIL), at New York Public Officers Law § 87 et seq. The Diocese may request confidential treatment be afforded to any material provided by the Diocese and/or the Independent Monitor to OAG. If the OAG receives a request pursuant to FOIL for materials that the Diocese has provided, or will provide to the OAG or the Independent Monitor in connection with the Investigation or this AOD, the OAG will, in accordance with FOIL, provide the Diocese with notice of the request and an opportunity to submit a written statement requesting an exception from disclosure and explaining why such exception should be granted. If the request for an exception is denied, the Diocese shall be entitled to pursue all procedures available to it under FOIL.

126. Nothing in this Assurance will relieve the Diocese of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

127. Nothing contained herein will be construed to limit the remedies available to the OAG in the event that the Diocese violates the Assurance after its Effective Date.

128. Nothing contained herein will be construed to waive any applicable privileges or defenses that the Diocese may assert in the information or documents produced to the OAG or Independent Monitor.

129. This Assurance of Discontinuance represents a voluntary agreement, which the OAG accepts in lieu of commencing a civil action against the Diocese or continuing the Investigation.

130. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

131. In the event that any one or more of the provisions contained in this Assurance will for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of this Assurance.

132. The Diocese acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

133. This Assurance will be governed by the laws of the State of New York and the United States of America, without regard to any conflict of laws principles.

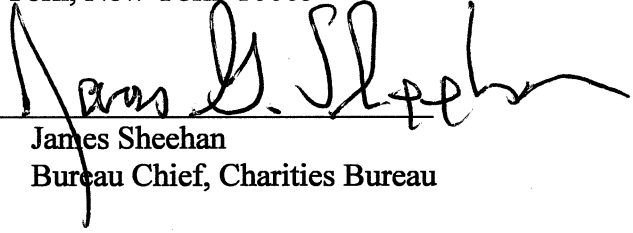
134. The Assurance and all its terms will be construed as if mutually drafted, with no presumption of any type against any party that may be found to have been the drafter.

135. This Assurance may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same agreement.

136. The Effective Date of this Assurance will be April 16, 2024.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, New York 10005

By: _____


James Sheehan
Bureau Chief, Charities Bureau

ROMAN CATHOLIC DIOCESE OF BROOKLYN
310 Prospect Park West
Brooklyn, New York 11215

By: _____

Most Rev. Robert J. Brennan
Bishop of Brooklyn

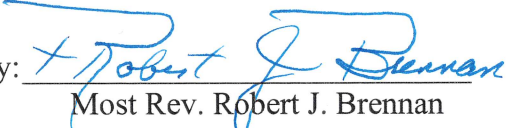
135. This Assurance may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same agreement.

136. The Effective Date of this Assurance will be April __, 2024.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, New York 10005

By: _____
James Sheehan
Bureau Chief, Charities Bureau

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