

Capital Bank Mortgage Inquiry Terms of Use

Effective Date: January 10, 2019

Important notice: This website is owned and operated by Capital Bank, N.A. (NMLS#401599) (“Capital Bank”, “we”, or “us”) and Capital Bank Home Loans, a division of Capital Bank, N.A. Except as otherwise noted, Capital Bank owns all logos and products referenced on this site and its affiliates’ sites. To learn more about Capital Bank, a nationally-chartered bank, please visit [About Capital Bank](#) and visit the [NMLS Access Page](#) then click on “Consumer Access”. Capital Bank is an Equal Housing Lender. As The Federal Equal Credit Opportunity Act prohibits, we do not engage in business practices that discriminate against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (providing that the applicant has the capacity to enter into a binding contract); because all or part of the applicant’s income derives from public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers our compliance with this law is the Office of the Comptroller of the Currency, 1301 McKinney Street, Suite 3450, Attn: Consumer Assistance Group, Houston, TX 77010. Phone: 800-613-6743.

This website contains a mortgage inquiry platform (“*Quick Close*” or the “Platform”) to consolidate information necessary for Capital Bank’s consideration of loan applications **but is not an official loan application, nor is *Quick Close* a means by which you can obtain a rate lock.** Once you use *Quick Close* to submit a loan inquiry, one of Capital Bank’s loan officers will contact you by telephone to gather additional personal, confidential information necessary, including property address, appraisals, credit reports, title reports and other diligence items necessary to process your loan application. **Your loan officer will also provide you with a copy of the Uniform Residential Mortgage Loan Application (approved by Fannie Mae and Freddie Mac), and relevant disclosures required under local, state and federal law. Any disputes about these Terms of Use or *Quick Close* are subject to binding arbitration and a waiver of class action rights as detailed in the “mandatory arbitration and class action waiver” section below.**

- Please note that by checking this box, submitting your contact information, and using and accessing *Quick Close* to make a mortgage inquiry, you are agreeing to the following terms, including [Capital Bank's Security Policy, Online Privacy Notice, and Notice of Privacy Policy](#); you are also agreeing to the Terms of Service and Privacy Policy of Roostify, Capital Bank’s Platform provider, and you are consenting to permit Capital Bank to pull your credit in connection with this inquiry. If you do not agree to these Terms of Use in their entirety, you may not use or access *Quick Close*.

Please review these terms, rules, and restrictions (“Terms of Use” or “Terms”) that govern your use of our products, services, website, and *Quick Close*, our mortgage inquiry *Quick Close*. For purposes of these Terms of Use, “you” and “your” mean the *Quick Close* account creator, authorized signer, authorized representative, delegate, and/or other authorized *Quick Close* user, including co-borrower, if applicable. *Quick Close* allows users to provide and consolidate information that we need to process loan inquiries. If you have any questions, comments, or concerns regarding these Terms or *Quick Close*, please contact us at homeloans@capitalbankmd.com.

These Terms of Use are a legal agreement between you and Capital Bank. The Terms include the provisions below, as well as those in Capital Bank’s Security Policy, Online Privacy Notice, and Notice of Privacy Policy. Each time you access or use *Quick Close* or upload or post any content to *Quick Close*, you are agreeing that you have read and understand and agree to be bound by these Terms. If you do not agree to these Terms, then you have no right to access or use *Quick Close*. **Capital Bank reserves the right within its absolute and sole discretion, to modify or discontinue your access to *Quick Close* at any time and for any reason, with or without notice.** We may, from time to time, modify these Terms of Use. If so, we will post the updated Terms on the website. If you do not agree to, or cannot comply with, the modified Terms, you must stop using *Quick Close*. The updated Terms will take effect after posting and will apply on a going-forward basis, unless we notify you otherwise, and except as provided in the Mandatory Arbitration and Class Action Waiver section of these Terms. Your continued use of *Quick Close* after any such update constitutes your binding acceptance of such changes.

1. Eligibility and Permitted Scope of Use

- A. **Eligibility.** To use *Quick Close* you and any co-borrower must be, and represent and warrant that you are, of legal age (18 years of age or older or otherwise of legal age in your jurisdiction) and competence. If you're agreeing to these Terms on behalf of an organization, entity, or co-borrower, you represent and warrant that you are authorized to agree to these Terms on behalf of that organization, entity, or co-borrower and bind them to these Terms (in which case, the references to "you" and "your" in these Terms, except for in this sentence, refer to that organization, entity, or co-borrower). If Capital Bank has previously prohibited you from accessing *Quick Close*, you do not have permission to access *Quick Close*.
- B. **Joint Borrowers.** If you use *Quick Close* with one or more co-borrowers, you hereby represent that you have the authority to agree to these Terms of Use on their behalf, submit information on any co-borrower's behalf, and you have notified your co-borrower(s) that you will be sharing one inquiry account. If your co-borrower does not consent, he or she must provide information for your inquiry directly to a loan officer or use a separate *Quick Close* account. If joint borrowers choose to utilize a single *Quick Close* account, by using *Quick Close*, each consent to these Terms of Use and agree that they will all have access to all information supplied by any co-borrower. Such co-borrowers may have the ability to view, print, transmit, save, and/or edit the information. Access may continue for as long as the co-borrowers utilize the single *Quick Close* account in connection with the inquiry process.
- C. **Use Outside the United States of America.** *Quick Close* is controlled and offered by Capital Bank from within the United States of America and Capital Bank requires your use of *Quick Close* exclusively within the United States and in accordance with all local, state and federal law. Capital Bank makes no representations that *Quick Close* is appropriate for use in other locations.
- D. **Scope of Use.** You agree that you will utilize *Quick Close* only in connection with your inquiry as to the business you propose to transact with Capital Bank and in accordance with all local, state and federal laws applicable to the use of *Quick Close*. You hereby agree and certify that the information you may provide via *Quick Close* that Capital Bank will rely on is accurate, true, current and complete. You will be subject to these Terms of Use regardless of whether you ultimately transact business with Capital Bank.
- E. **Your License.** Subject to your compliance with these Terms, we grant you a limited, non-exclusive, non-sublicensable, non-transferable, and revocable right to access and use *Quick Close* only for your own internal, personal, or non-commercial use, and only in a manner that complies with all local, state, national, and foreign laws, treaties, regulations, and other legal requirements that apply to you or your use of *Quick Close*, including those relating to data security and data privacy. If your use of *Quick Close* is prohibited by applicable law, then you do not have authorization to use *Quick Close*. Capital Bank is not responsible for unlawful uses of *Quick Close*.
- F. **License You Grant Capital Bank.** Anything you upload, share, store, or otherwise provide, including Data Retrieval and Account Information, is content that you provide. In order to display your content on *Quick Close*, you grant us certain rights in that content. As such, you hereby grant Capital Bank a license to translate, modify (for technical purposes, such as making your content viewable on a mobile device as well as a computer), reproduce, and otherwise act with respect to such content, in each case to enable us to enhance the operation of *Quick Close*, or to provide products or services to you through or in connection with *Quick Close*. You also grant Capital Bank a license to aggregate and/or de-identify the information you provide, which Capital Bank may use for improving *Quick Close* and developing business analytics, as discussed in our [Online Privacy Notice](#). This is a license only; your ownership in the content you provide is not affected. You agree that the licenses you grant are royalty-free, perpetual, sub-licensable, irrevocable, and worldwide.

In addition, please note that the foregoing licenses are subject to our [Online Privacy Policy and Privacy Policy Notice](#).

- G. **Prohibited Uses.** Use of *Quick Close* for any illegal purpose, or any other purpose not expressly permitted in these Terms of Use, is strictly prohibited. Without limitation, you will not:
- Use *Quick Close* to harass, abuse, or threaten any other person;
 - Provide information that is unlawful, harmful, destructive; tortious, defamatory, libelous, or invasive of another's privacy;
 - Interfere with or harm Capital Bank's name and reputation, employees, representatives or agents or impair or limit Capital Bank or its website's operations;
 - Gain unauthorized access to Capital Bank's network services;
 - Imply affiliation with Capital Bank or to impersonate or misrepresent any affiliations with Capital Bank or any other person or entity;
 - Copy, download (other than as otherwise expressly permitted by these Terms of Use), manipulate, modify, distribute, post, transmit, display, perform, reproduce, broadcast, duplicate, publish, republish, upload, license, reverse engineer, create derivative works from, or offer for sale any content or other information obtained from or through *Quick Close* by any means except as provided for in these Terms of Use or with Capital Bank's prior written consent;
 - Scrape, access, monitor, index, frame, link, or copy any content or information on *Quick Close* by accessing *Quick Close* in an automated way, using any robot, spider, scraper, web crawler, or any other method of access other than manually accessing the publicly available portions of *Quick Close* through a browser or accessing *Quick Close* through any approved access point;
 - Violate, bypass or circumvent other measures employed to prevent or limit access to *Quick Close*;
 - Post material that advocates illegal activity or discusses illegal activities;
 - Upload or otherwise make available any material that contains pornographic, sexually explicit, violent, obscene, discriminatory, hateful, threatening or abusive, defamatory, offensive, harassing or otherwise objectionable images, text or content;
 - Upload or otherwise make available any material that contains any software, device, instructions, computer code, files, programs and/or other content or feature that is designed to interrupt, destroy, or limit the functionality of any computer software, hardware or other equipment (i.e., any time bomb, virus, software lock, worm, self-destruction, drop-device, malicious logic, Trojan horse, trap door, "disabling," "lock out," or "metering" device, or any malicious code);
 - Attempt to disable, overburden, or impair the proper working of *Quick Close*;
 - Distribute any third party's intellectual property unless you have the right to do so, or remove or alter any copyright, trademark, or other proprietary notice contained on *Quick Close*;
 - Make available trade secrets or other confidential or proprietary information, or provide any material that you do not have a right to make available;
 - Falsely state or otherwise misrepresent your affiliation with a person or entity, or impersonate any person or entity;
 - Frame, inline link, or similarly display *Quick Close* or any portion thereof;
 - Violate these Terms of Use or any guidelines or policies posted by Capital Bank;
 - Facilitate violations of these Terms of Use or the Privacy Policy; and/or
 - Interfere with any other party's use and enjoyment of *Quick Close*.

Capital Bank reserves the right, but not the obligation, in our sole and absolute discretion and with or without notice to you, to remove any information provided by you, block access to and/or deactivate your *Quick Close* account for violation of these Terms of Use.

2. Account Registration and Access; Our Rights to Contact You

- A. **Account Registration and Confidentiality.** You may be required to sign up for a *Quick Close* account and to provide information such as your email address, telephone number, an account password, and recovery phone number for creating and authenticating a *Quick Close* account (“Account Credentials”). If so, you agree to provide us with Account Credentials that are accurate, complete, and current. You may not use as Account Credentials an email address, telephone number, or any other information that you do not have the right to use, or other identifier with the intent to impersonate that person. You agree that you will protect the security of your *Quick Close* account and password, and that you will not share your *Quick Close* account or password with anyone (other than a co-borrower) without our written permission. If you are using *Quick Close* jointly with another co-borrower, you understand and agree that your co-borrower will have access to *Quick Close* and all of your content.
- B. **Your Consent to Have Capital Bank Contact You.** Your use of *Quick Close*, creation of your account, and submission of your contact information on *Quick Close* constitute your and any co-borrower’s agreement to these Terms of Use and our Security Policy, Online Privacy Policy, and Notice of Privacy Policy. Although it is not a condition to you obtaining services from Capital Bank, you and any co-borrower expressly consent to having Capital Bank contact you and any co-borrower about your loan inquiry by telephone or text message, including the use of an automatic telephone dialing system and/or a prerecorded message, to the cellular or residential telephone number you have provided, even if that phone number is on a corporate, state, or national Do Not Call Registry. You and any co-borrowers also agree that by communicating with us by telephone that these calls may be recorded and monitored.
- C. **Unauthorized Account Use.** You are responsible for any activity associated with your *Quick Close* account, and for notifying us at homeloans@capitalbankmd.com if you become aware of any unauthorized access to your *Quick Close* account. You understand and agree that we may require you and any co-borrower to provide information that may be used to confirm your identity and help ensure the security of your *Quick Close* account. Capital Bank will not be liable for any loss, damages, liability, expenses or attorneys’ fees that you may incur as a result of someone else using your application password or account, as a result of your use or misuse, with or without your knowledge, and regardless of whether you have or have not advised us of such unauthorized use. In such case, you will be liable for losses, damages, liability, expenses and attorneys’ fees incurred by Capital Bank or a third party due to someone else’s use of your *Quick Close* account.
- D. **Technical Requirements.** Your use of *Quick Close* may be available through a compatible mobile device with internet access and may require certain software. You agree that you are solely responsible for these requirements, including any applicable changes, updates, and fees associated with them, as well as for complying with the terms of your mobile device and telecommunications provider. Capital Bank makes no warranties or representations of any kind, express, statutory, or implied as to (a) the availability of a telecommunication platform from your provider or access to a telecommunication platform at any time or from any location; (b) any loss, damage, or security intrusion of the telecommunication platform from your provider; and (c) any disclosure of information to third parties or failure to transmit any data, communications, or settings in connection with a telecommunication platform from your provider.

3. Capital Bank’s Proprietary Rights

- A. **Intellectual Property Rights.** The website is owned and operated by Capital Bank and contains material which is derived in whole or in part from material supplied by Capital Bank and our partners, as well as other sources, and is protected by United States copyright laws, international treaty provisions, trademarks, service marks and other intellectual property laws. You agree to abide by all applicable copyright and other laws, as well as any additional copyright notices or restrictions contained in *Quick Close* and on our website. You acknowledge that *Quick Close* has been developed, compiled, prepared, revised, selected, and arranged by Capital Bank and others through

the application of methods and standards of judgment developed and applied through the expenditure of substantial time, effort, and money and constitute valuable intellectual property of Capital Bank and its partners. You agree to protect Capital Bank and its partners' proprietary rights during and after your use of *Quick Close* and to comply with all reasonable written requests made by Capital Bank or our partners, suppliers and licensors of content or otherwise to protect their and others' contractual, statutory, and common law rights in *Quick Close*. You agree to notify Capital Bank immediately at homeloans@capitalbankmd.com upon becoming aware of any unauthorized access or use of *Quick Close* by any individual or entity or of any claim that *Quick Close* infringes upon any copyright, trademark, or other contractual, statutory, or common law rights. All present and future rights in and to trade secrets, patents, copyrights, trademarks, service marks, know-how, and other proprietary rights of any type under the laws of any governmental authority, domestic or foreign, including without limitation rights in and to all applications relating to *Quick Close* shall, as between you and Capital Bank, at all times be and remain the sole and exclusive property of Capital Bank or its partners.

- B. **Use of Marks.** You may not use any of Capital Bank or its partners' trademarks, trade names, service marks, copyrights, or logos in any manner which creates the impression that such items belong to or are associated with you or, except as otherwise provided herein, are used with Capital Bank's consent, and you acknowledge that you have no ownership rights in or to any such items.

4. Authorization to Retrieve and Use Information You Provide

- A. **Data Retrieval Information.** By providing information about yourself, including your name, phone number, personal information and third-party account credentials such as usernames, passwords, PINs, other log-in information, and other content ("Data Retrieval Information"), you are licensing such Data Retrieval Information to Capital Bank and our agents for the purpose of your access to *Quick Close* and our processing of your application. You hereby authorize and permit Capital Bank and its partners to use and store the Data Retrieval Information for the purpose of providing *Quick Close*. Capital Bank and its agents will store Data Retrieval information in encrypted form, and will use such information in accordance with these Terms and our Online Privacy Policy.
- B. **Account Information.** Where available, for the purpose of completing your application, Capital Bank and our agents may access and retrieve, or enable you to initiate access to and retrieval of, account information and other data and documents ("Account Information") from online accounts at third parties, including financial institutions, investing platforms, payroll providers, and tax preparation platforms, among others, in accordance with our [Online Privacy Policy and Notice of Privacy Policy](#). By using *Quick Close*, you expressly authorize Capital Bank and our agents to access, retrieve, and transmit credit documentation and other information for verifying and/or re-verifying your assets, income, and employment. When available, you agree that such information may be prepopulated in *Quick Close*.
- C. **Limited Power of Attorney.** As part of these Terms and solely for the purpose of your use of *Quick Close*, you grant Capital Bank and our agents a limited power of attorney, and appoint Capital Bank and our agents as your attorney-in-fact and agent, to access third-party websites, use Data Retrieval Information you provide, and retrieve Account Information, with the full power and authority to do and perform each task necessary in connection with such activities as you could do in person. You further acknowledge and agree that when Capital Bank and our agents are accessing and retrieving account information from third-party websites, we are acting as your agent, and not as the agent of or on behalf of the third party that operates the third-party website. Capital Bank cannot always foresee or anticipate technical or other difficulties that may result in failure to obtain data or in loss of data. Further, Capital Bank does not assume responsibility for the timeliness, accuracy, deletion, or non-delivery of, or failure to store, any data.
- D. **Right to Provide Data Retrieval and Account Information.** You represent and warrant to us that you have all rights to the Data Retrieval and Account Information that you provide to us via *Quick Close*. You are responsible for the accuracy and completeness of the Data Retrieval and Account

Information you provide. You, and not Capital Bank, are liable in the event that such Data Retrieval and/or Account Information is not accurate or complete. You agree that you will indemnify, defend, and hold harmless Capital Bank for all claims resulting from your unauthorized access to Data Retrieval and/or Account Information, or for any inaccurate or incomplete Data Retrieval and/or Account Information that you provide us. We reserve the right, at our own expense, to assume the exclusive defense and control of such disputes, and in any event you will cooperate with us in asserting any available defenses.

- E. **Feedback.** Feedback you provide to us about your user experience with *Quick Close*, by email or through other mediums, excluding personally identifiable consumer information, shall be deemed to be non-confidential, and we assume no obligation to protect such information from disclosure or provide compensation to you. The submission of such information to us shall in no way prevent the purchase, manufacture, or use of similar products, services, plans, and ideas by us for any purpose whatsoever, and we shall be free to reproduce, use, disclose, and distribute the information to others without restriction.

5. Legal Compliance.

You acknowledge, consent, and agree that Capital Bank may access, preserve, and disclose content you provide us if required to do so by law or in a good faith belief that such access, preservation, or disclosure is permitted by our [Online Privacy Notice or Notice of Privacy Policy](#) or reasonably necessary or appropriate for any of the following reasons: (1) to comply with legal process (e.g., a subpoena, court order, or warrant); (2) to enforce these Terms; (3) to respond to claims that any content violates the rights of third parties; (4) to protect the rights, property, or personal safety of Capital Bank, our agents and affiliates, our users, and the public; or (5) to address your requests. In addition, please note that Capital Bank is not in the business of providing professional services or legal, tax, or other advice through or relating to your application or use of *Quick Close*.

Warranties and Disclaimers.

You expressly understand and agree that your use of *Quick Close* is solely at your own risk and that the content therein is provided on an “as-is” basis and without any warranty of any kind from Capital Bank or others. Capital Bank does not make any representations or warranties concerning any content contained in or accessed through *Quick Close*, and we will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through *Quick Close*. Capital Bank further makes no representations or warranties regarding suggestions or recommendations of products or services described in *Quick Close* and such products and services are provided on an “as-is” basis, without warranties of any kind, either express or implied, including, without limitation, implied warranties of merchantability, fitness for a particular purpose, non-infringement, or that use of *Quick Close* will be uninterrupted or error-free. Any content you download or otherwise obtain through *Quick Close* is downloaded and used at your sole discretion and risk and you will be solely responsible for any damage to your computer system, mobile device, software, technology or loss of data that results from the download or use of any such content. Capital Bank makes no representation, warranty, guarantee, or promise that the advice, information, products, services, or *Quick Close* will meet your requirements or achieve any particular results.

6. Limitation of Liability

To the fullest extent allowed by applicable law, under no circumstances and under no legal theory (including, without limitation, tort, contract, strict liability, or otherwise) shall Capital Bank be liable to you or to any other person for (a) any indirect, special, incidental, or consequential damages of any kind, including damages for lost profits, loss of goodwill, work stoppage, accuracy of results, or computer failure or malfunction. If you are a California resident, you hereby waive California Civil Code §1542, which says: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.” This release includes the criminal acts of others. In the event that you have a dispute with any third party, you agree that Capital Bank is under no obligation to become involved on your behalf. You release Capital Bank, and our officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way relating to such disputes and/or *Quick Close*.

7. Indemnity

You agree to indemnify, defend, and hold Capital Bank and our respective officers, directors, employees, members, shareholders, and representatives (and all successors and assigns of any of the foregoing) harmless from and against any claim or demand, including, without limitation, reasonable attorneys' fees and disbursements, made in connection with or arising out of your violation of these Terms of Use, our [Online Privacy Policy and Notice of Privacy Policy](#), and/or your submission, posting, or transmission of content to *Quick Close*. Capital Bank reserves the right, at our own expense, to assume the exclusive defense and control of such disputes, and in any event you will cooperate with us in asserting any available defenses.

8. Third Party Links and *Quick Close*

Capital Bank has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of, or opinions expressed in, any third-party websites or by any third party that you interact with through *Quick Close*. In addition, Capital Bank will not and cannot monitor, verify, censor, or edit the content of any third-party website or service. By using *Quick Close*, you release and hold Capital Bank harmless from any and all liability arising from your use of any third-party website or service.

9. Modification and Termination

- A. **Modification of *Quick Close*.** Capital Bank reserves the right at any time to modify or discontinue, temporarily or permanently, *Quick Close* (or any part thereof), with or without notice. You agree that Capital Bank shall not be liable to you or any third party for any modification, suspension, or discontinuance of *Quick Close*.
- B. **Termination.** These Terms are effective unless and until terminated by you or us. We may, in our sole and absolute discretion, deny you access to all or part of *Quick Close* at any time for any or no reason at all, with or without notice to you. Grounds for such termination shall include, but not be limited to, (a) breaches or violations of these Terms or other agreements, (b) requests by law enforcement or government agencies, (c) discontinuance or material modification of *Quick Close* (or any part thereof), (d) unexpected technical or security issues or problems, (e) extended periods of inactivity, (f) activities related to protecting the rights, property, or safety of Capital Bank, our agents and affiliates, or our users and the public, or (g) if you provide any information, including Capital Bank Account Credentials or Data Retrieval Information, that is false, inaccurate, out-of-date, or incomplete. If we terminate your right to use *Quick Close*, these Terms will terminate and all rights you have to access *Quick Close* will immediately terminate; however, certain provisions of these Terms will still apply post-termination, including without limitation, the Mandatory Arbitration and Class Action Waiver provisions. Termination of your *Quick Close* account may also include, at Capital Bank's sole discretion, the deletion of your *Quick Close* account and/or content.

10. Mandatory Arbitration and Class Action Waiver

Please read this section carefully, it affects your legal rights, including your right to file a lawsuit in court.

- A. **Application.** You and Capital Bank agree that these Terms of Use affect interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions. This Section 11 is intended to be interpreted broadly and governs any and all disputes between us including but not limited to claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory; claims that arose before these Terms or any prior agreement (including, but not limited to, claims related to advertising); and claims that may arise after the termination of these Terms. The only disputes excluded from this broad prohibition are the litigation of certain intellectual property and small court claims, as provided below.

- B. **Initial Dispute Resolution.** Most disputes can be resolved without resort to arbitration. If you have any dispute with us, you agree that before taking any formal action, you will contact us at homeloansdisputes@capitalbankmd.com, use the term “dispute” in the subject line, and provide a brief written description of the dispute and your contact information (including your username, if your dispute relates to a *Quick Close* account). Except for intellectual property and small claims court claims, the parties agree to use their best efforts to settle any dispute, claim, question, or disagreement directly through consultation with Capital Bank, and good faith negotiations shall be a condition to either party initiating a lawsuit or arbitration.
- C. **Binding Arbitration.** If the parties do not reach an agreed-upon solution within a period of thirty (30) days from the time the informal dispute resolution is initiated under the Initial Dispute Resolution provision above, then either party may initiate binding arbitration as the sole means to resolve claims, subject to the terms set forth below. Specifically, all claims arising out of or relating to these Terms (including the Terms’ formation, performance, and breach), the parties’ relationship with each other, and/or your use of *Quick Close* shall be finally settled by binding arbitration administered by JAMS in accordance with the JAMS Streamlined Arbitration Procedure Rules for claims that do not exceed \$250,000 and the JAMS Comprehensive Arbitration Rules and Procedures for claims exceeding \$250,000 in effect at the time the arbitration is initiated, excluding any rules or procedures governing or permitting class actions. See jamsadr.com for more information.
- D. **Arbitrator’s Powers.** The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability, or formation of these Terms including but not limited to any claim that all or any part of these Terms is void or voidable, whether a claim is subject to arbitration, or the question of waiver by litigation conduct. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator’s award shall be written and shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction.
- E. **Filing a Demand.** To start an arbitration, you must do the following: (a) Write a Demand for Arbitration that includes a description of the claim and the amount of damages you seek to recover (you may find a copy of a Demand for Arbitration at www.jamsadr.com); (b) Send three copies of the Demand for Arbitration, plus the appropriate filing fee, to JAMS, Two Embarcadero Center, Suite 1500, San Francisco California 94111; and (c) send one copy of the Demand for Arbitration to us at: Capital Bank, N.A. 2275 Research Boulevard, Suite 600, Rockville, MD 20850.

To the extent the filing fee for the arbitration exceeds the cost of filing a lawsuit, Capital Bank will pay the additional cost. If the arbitrator finds the arbitration to be non-frivolous, Capital Bank will pay the fees invoiced by JAMS, including filing fees and arbitrator and hearing expenses. You are responsible for your own attorneys’ fees unless the arbitration rules and/or applicable law provide otherwise. The parties understand that, absent this mandatory arbitration provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court. Arbitration may take place in the county where you reside at the time of filing, unless you and we both agree to another location or telephonic arbitration.

- F. **Class Action Waiver.** The parties further agree that the arbitration shall be conducted in the party’s respective individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. We agree that each may bring claims against each other only in your or our individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provisions set forth above shall be deemed null and void in their entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

- G. **Exceptions: Litigation of Intellectual Property and Small Claims Court Claims.** Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring enforcement actions, validity determinations, or claims arising from or relating to theft, piracy or unauthorized use of intellectual property in state or federal court or in the U.S. Patent and Trademark Office to protect its intellectual property rights ("intellectual property rights" means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights). Either party may also seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction.
- H. **30-Day Right to Opt Out.** You have the right to opt out and not be bound by the arbitration and class action waiver provisions set forth above by sending written notice of your decision to opt out to at homeloansdisputes@capitalbankmd.com with the subject line, "arbitration and class action waiver opt-out." The notice must be sent within thirty (30) days of your first use of *Quick Close*. Otherwise you shall be bound to arbitrate disputes in accordance with the terms of these paragraphs. If you opt out of these arbitration provisions, Capital Bank also will not be bound by them.
- I. **Changes to This Section.** Capital Bank will provide thirty (30) days' notice of any changes to this section regarding arbitration by posting on this website. Amendments will become effective thirty (30) days after they are posted on Capital Bank's website or sent to you by email. Changes to this section will otherwise apply prospectively only to claims arising after the thirtieth (30th) day. If a court or arbitrator decides that this subsection on "Changes to This Section" is not enforceable or valid, then this subsection shall be severed from the section entitled Mandatory Arbitration and Class Action Waiver, and the court or arbitrator shall apply the first Mandatory Arbitration and Class Action Waiver section in existence after you began using *Quick Close*.
- J. **Survival.** This Mandatory Arbitration and Class Action Waiver section shall survive any termination of your use of *Quick Close*.

11. Controlling Law and Severability

These Terms will be interpreted in accordance with the laws of the State of Maryland, without regard to its conflict-of-law provisions. For all purposes of these Terms, the parties consent to exclusive jurisdiction and venue in the state or federal courts located in, respectively, Montgomery County, Maryland, or the United States District Court for the District of Maryland. If any part of these Terms is considered invalid, it shall be enforced as effectively as possible while all other provisions remain in full effect.

12. General Terms

- A. **Force Majeure.** Under no circumstances shall Capital Bank or our partners, licensors or suppliers be held liable for any delay or failure in performance resulting directly or indirectly from an event beyond our reasonable control.
- B. **No Waiver; Severability.** No waiver of any term of these Terms will be binding unless in writing, no waiver of any term of these Terms will be deemed a further or continuing waiver of such term or any other term, and the failure of Capital Bank to exercise or enforce any right or remedy in these Terms does not waive that right or remedy. If an arbitrator or a court of competent jurisdiction finds any provision of these Terms to be invalid, the parties agree that the court should endeavor to give effect, to the maximum extent permitted by law, to the parties' intentions as reflected in the provision, and the other provisions of these Terms will remain in full force and effect.
- C. **Third-Party Beneficiaries.** You agree that, except as otherwise expressly provided in these Terms, there shall be no third-party beneficiaries to these Terms.
- D. **Statute of Limitations.** Except as otherwise prohibited by applicable law, you agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use

of *Quick Close* and/or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

- E. **Miscellaneous.** These Terms (and all terms and conditions incorporated herein) constitute the entire agreement between you and Capital Bank and govern your use of *Quick Close* and related products, and services provided by Capital Bank, and supersede any prior agreements between you and Capital Bank on the subject matter. These Terms, and any rights or licenses granted hereunder, may not be assigned or delegated by you. These Terms, and any rights or licenses granted hereunder, may be assigned or delegated by Capital Bank without restriction. These Terms bind and inure to the benefit of each party and the party's successors and permitted assigns. These Terms may not be modified by an oral statement by a representative of Capital Bank. No agency, partnership, joint venture or employee-employer relationship is intended or created by these Terms. You agree that any agreements made by and between you and us in electronic form are as legally binding as if made in physical written form. These Terms will not be construed against the drafter. The section titles in these Terms are for convenience only and have no legal or contractual effect.
- F. **Optional Provision of Information for Government Monitoring Purposes.** Although Capital Bank may accept a loan application via the Internet, as stated in the preamble of this Agreement, and although you are authorizing Capital Bank to pull your credit, Capital Bank utilizes *Quick Close* for your inquiry purposes only. One of our loan officers will contact you after you make your inquiry to gather further information from you and provide the necessary disclosures and additional information concerning the loan and rate lock process. As part of your mortgage inquiry, you may be asked to provide information that will ultimately be used for the purpose of helping ensure that all applicants are treated fairly and that the housing needs of communities and neighborhoods are being fulfilled. For residential mortgage lending, federal law requires that Capital Bank ask potential borrowers for their demographic information (ethnicity, sex, and race) in order to monitor our compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to provide this information but are encouraged to do so. The law provides that we may not discriminate on the basis of this information, or on whether you choose to provide it. However, if you choose not to provide the information and you make an application in person with Capital Bank, federal regulations require us to note your ethnicity, sex, and race on the basis of visual observation or surname. The law also provides that we may not discriminate on the basis of age or marital status information you provide. You may select one or more designations for "Ethnicity" and one or more designations for "Race". If you do not wish to provide some or all of this information, you may indicate your preference on *Quick Close*.
- G. **Notices.** We may deliver notice to you by email, posting a notice on *Quick Close*, or any other method we choose, and such notice will be effective on dispatch. If you give email or other electronic notice to us, it will be effective when received and confirmed as received by Capital Bank at the following email address: homeloans@capitalbankmd.com By submitting your inquiry, you consent to be contacted by Capital Bank or its partners (on a recorded line), automated calling, pre-recorded calling, text message, email, fax, telephone or any means, even if you have opted in to the National Do Not Call List, any state equivalent Do Not Call List or the internal Do Not Call List of any company. You understand that our partners may maintain your information. In the event you no longer want to receive communications from our partners, you agree to notify that third-party directly. You can opt-out of various contact methods in accordance with Capital Bank's [Online Privacy Policy and Notice of Privacy Policy](#) .
- H. **Communications.** When communicating with Capital Bank through this website, *Quick Close*, chat or via Email, regardless of whether you are working with a loan officer, do not use the website, *Quick Close*, chat or Email to communicate any time-sensitive instructions (such as inquiries regarding interest rates locks, cancellation of a closing, rescissions, etc.). Instead, all transactions must be confirmed in writing by Capital Bank to be accepted by and binding upon us. For purposes

of clarity, your use of *Quick Close* is for inquiries only. All loan approvals, prequalifications, rate locks, deposit and refund agreements are only made by Capital Bank directly and in writing.

- I. **No General Agreement to e-Sign.** General communications through this website, *Quick Close*, chat or via Email are not intended by Capital Bank to constitute either an electronic record or an electronic signature, or to constitute any agreement to conduct a transaction by electronic means, unless a specific statement to the contrary is included in the message and specific e-signature procedures are employed. However, your agreement to “click to accept” a button or box binds you to these Terms of Use.