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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

**Date of Report (date of earliest event reported): September 26, 2017**

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**NetApp, Inc.**

(Exact name of Registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**0-27130**  
(Commission  
File Number)

**77-0307520**  
(I.R.S. Employer  
Identification Number)

**495 East Java Drive  
Sunnyvale, CA 94089**  
(Address of principal executive offices) (Zip Code)

**(408) 822-6000**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report )

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 1.01 Entry into a Material Definitive Agreement.***Underwritten Public Offering of Senior Notes due 2019 and Senior Notes due 2024*

On September 26, 2017, NetApp, Inc. (“NetApp” or the “Company”) entered into an underwriting agreement (the “Underwriting Agreement”) with J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC, as representatives of the several underwriters named therein, to issue and sell \$400 million aggregate principal amount of 2.000% Senior Notes due 2019 (the “2019 Notes”) and \$400 million aggregate principal amount of 3.300% Senior Notes due 2024 (the “2024 Notes” and together with the 2019 Notes, the “Notes”) in a public offering (the “Offering”). The Offering was made pursuant to the Company’s shelf registration statement on Form S-3 (File No. 333-208311) and a related prospectus filed with the Securities and Exchange Commission (the “SEC”) on December 2, 2015 and a prospectus supplement filed with the SEC on September 27, 2017. The Underwriting Agreement contains customary representations, warranties and agreements by NetApp, and customary closing conditions, indemnification rights and termination provisions.

The forgoing summary is qualified in its entirety by reference to the text of the Underwriting Agreement which is filed as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated herein by reference.

*Supplemental Indenture Relating to Senior Notes due 2019 and Senior Notes due 2024*

On September 29, 2017, NetApp entered into a Third Supplemental Indenture, relating to the issuance by the Company of the Notes (the “Third Supplemental Indenture”) which supplemented the Indenture, dated December 12, 2012 (the “Base Indenture,” and together with the Third Supplemental Indenture, the “Indenture”) with U.S. Bank National Association, as trustee, to establish the terms and form of the Notes. Interest is payable on the 2019 Notes semi-annually in arrears on March 27 and September 27 of each year, commencing March 27, 2018. Interest is payable on the 2024 Notes semi-annually in arrears on March 29 and September 29 of each year, commencing March 29, 2018. The 2019 Notes will mature on September 27, 2019, and the 2024 Notes will mature on September 29, 2024.

NetApp intends to use the net proceeds of the Notes for general corporate purposes, including repayment of \$750 million in aggregate principal amount of NetApp’s outstanding 2.00% Senior Notes due 2017 (including accrued and unpaid interest and any make-whole payment thereon) on or prior to their maturity in December 2017. NetApp may also be required to offer to repurchase the Notes upon a change in control and a contemporaneous downgrade of the Notes below an investment grade rating, and it may elect to redeem the Notes in whole or in part at any time, as further specified in the Indenture.

The Indenture contains limited affirmative and negative covenants of NetApp. The negative covenants restrict the ability of NetApp and its subsidiaries to incur debt secured by liens on its principal property or on shares of stock or indebtedness of its subsidiaries that own principal property; to engage in certain sale and lease-back transactions with respect to any principal property; and to consolidate, merge or sell all or substantially all of its assets.

Events of default under the Indenture include a failure to make payments, non-compliance with affirmative and negative covenants, and the occurrence of bankruptcy and insolvency-related events. NetApp’s obligations may be accelerated upon an event of default, in which case the entire principal amount of the Notes would become immediately due and payable.

The foregoing description of certain terms of the Indenture and the Notes does not purport to be complete and is qualified in its entirety by reference to the full text of the Base Indenture, which is filed as Exhibit 4.1 to the Current Report on Form 8-K filed on December 12, 2012 and is incorporated herein by reference, and the Third Supplemental Indenture, form of 2019 Note and form of 2024 Note, which are filed with this report as Exhibits 4.2, 4.3 and 4.4, respectively, and are incorporated herein by reference.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth under Item 1.01 above with respect to the Notes and the Second Supplemental Indenture is incorporated herein by reference.

**Item 8.01. Other Events.**

Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel to NetApp, has issued an opinion to NetApp dated September 29, 2017 regarding the legality of the Notes. A copy of the opinion is filed as Exhibit 5.1 hereto.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
1.1	<a href="#"><u>Underwriting Agreement, dated September 26, 2017, by and among NetApp, Inc. and J.P. Morgan Securities LLC and Morgan Stanley &amp; Co. LLC.</u></a>
4.1	<a href="#"><u>Indenture, dated December 12, 2012, by and between NetApp, Inc. and U.S. Bank National Association (incorporated by reference to Exhibit 4.1 of NetApp, Inc.'s Form 8-K filed December 12, 2012 (file no. 000-27130).</u></a>
4.2	<a href="#"><u>Third Supplemental Indenture, dated September 29, 2017, by and between NetApp, Inc. and U.S. Bank National Association.</u></a>
4.3	<a href="#"><u>Form of Note for NetApp's 2.000% Senior Notes due 2019 (incorporated by reference to Exhibit 4.2).</u></a>
4.4	<a href="#"><u>Form of Note for NetApp's 3.300% Senior Notes due 2024 (incorporated by reference to Exhibit 4.2).</u></a>
5.1	<a href="#"><u>Opinion of Wilson Sonsini Goodrich &amp; Rosati, Professional Corporation.</u></a>
23.1	<a href="#"><u>Consent of Wilson Sonsini Goodrich &amp; Rosati, Professional Corporation (contained in Exhibit 5.1 above).</u></a>

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**NETAPP, INC.**

September 29, 2017

By: /s/ Ronald J. Pasek

Name: Ronald J. Pasek

Title: Executive Vice President and Chief Financial Officer

**NETAPP, INC.**

**2.000% SENIOR NOTES DUE 2019**

**3.300% SENIOR NOTES DUE 2024**

**UNDERWRITING AGREEMENT**

September 26, 2017

J.P. Morgan Securities LLC  
383 Madison Avenue  
New York, New York 10179

Morgan Stanley & Co. LLC  
1585 Broadway  
New York, New York 10036

As Managers of the  
several Underwriters listed  
in Schedule II hereto

Ladies and Gentlemen:

NetApp, Inc., a Delaware corporation (the “**Company**”), proposes to issue and sell to the several underwriters named in Schedule II hereto (the “**Underwriters**”), for whom you are acting as managers (the “**Managers**”), the principal amount of its debt securities identified in Schedule I hereto (the “**Securities**”) under the terms and subject to the conditions set forth in this agreement (the “**Agreement**”), to be issued under the indenture (the “**Base Indenture**”) and third supplemental indenture (the “**Supplemental Indenture**” and, together with the Base Indenture, the “**Indenture**”) specified in Schedule I hereto between the Company and the Trustee identified in such Schedule (the “**Trustee**”). If the firm or firms listed in Schedule II hereto include only the Managers listed in Schedule I hereto, then the terms “Underwriters” and “Managers” as used herein shall each be deemed to refer to such firm or firms.

The Company has filed with the Securities and Exchange Commission (the “**Commission**”) a registration statement, including a prospectus, (the file number of which is set forth in Schedule I hereto) on Form S-3, relating to securities (the “**Shelf Securities**”), including the Securities, to be issued from time to time by the Company. The registration statement as amended to the date of this Agreement, including the information (if any) deemed to be part of the registration statement at the time of effectiveness pursuant to Rule 430A or Rule 430B under the Securities Act of 1933, as amended (the “**Securities Act**”), is hereinafter referred to as the “**Registration Statement**,” and the related prospectus covering the Shelf Securities dated December 2, 2015 in the form first used to confirm sales of the Securities (or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act) is hereinafter referred to as the “**Basic Prospectus**.” The Basic Prospectus, as supplemented by the prospectus supplement specifically relating to the Securities in the form first used to confirm sales of the Securities (or in the form first made available to the Underwriters by the Company to meet

requests of purchasers pursuant to Rule 173 under the Securities Act) is hereinafter referred to as the “**Prospectus**,” and the term “**preliminary prospectus**” means any preliminary form of the Prospectus. For purposes of this Agreement, “**free writing prospectus**” has the meaning set forth in Rule 405 under the Securities Act, “**Time of Sale Prospectus**” means the documents set forth opposite the caption “Time of Sale Prospectus” in Schedule I hereto, and “**broadly available road show**” means a “bona fide electronic road show” as defined in Rule 433(h)(5) under the Securities Act that has been made available without restriction to any person. As used herein, the terms “Registration Statement,” “Basic Prospectus,” “preliminary prospectus,” “Time of Sale Prospectus” and “Prospectus” shall include the documents, if any, incorporated by reference therein on the date hereof. The terms “**supplement**,” “**amendment**,” and “**amend**” as used herein with respect to the Registration Statement, the Basic Prospectus, the Time of Sale Prospectus, any preliminary prospectus or the Prospectus shall include all documents subsequently filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), that are deemed to be incorporated by reference therein.

1. *Representations and Warranties.* The Company represents and warrants to and agrees with each of the Underwriters that:

(a) The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purpose are pending before or, to the Company’s knowledge, threatened by the Commission. If the Registration Statement is an automatic shelf registration statement as defined in Rule 405 under the Securities Act, the Company is a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) eligible to use the Registration Statement as an automatic shelf registration statement and the Company has not received notice that the Commission objects to the use of the Registration Statement as an automatic shelf registration statement.

(b) (i) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Time of Sale Prospectus or the Prospectus complied or will comply when so filed in all material respects with the Exchange Act and the applicable rules and regulations of the Commission thereunder, (ii) each part of the Registration Statement, when such part became effective, did not contain, and each such part, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) the Registration Statement as of the date hereof does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (iv) the Registration Statement and the Prospectus comply, and as amended or supplemented, if applicable, will

comply in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder, (v) the Time of Sale Prospectus does not, and at the time of each sale of the Securities in connection with the offering when the Prospectus is not yet available to prospective purchasers and at the Closing Date (as defined in Section 4), the Time of Sale Prospectus, as then amended or supplemented by the Company, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, (vi) each broadly available road show, if any, when considered together with the Time of Sale Prospectus, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, (vii) each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company, when considered together with the Time of Sale Prospectus, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and (viii) the Prospectus does not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to (A) statements or omissions in the Registration Statement, the Time of Sale Prospectus or the Prospectus based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Managers expressly for use therein or (B) that part of the Registration Statement that constitutes the Statement of Eligibility (Form T-1) under the Trust Indenture Act of 1939, as amended (the “**Trust Indenture Act**”), of the Trustee.

(c) The Company is not an “ineligible issuer” in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act. Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Except for the free writing prospectuses, if any, identified in Schedule I hereto, and electronic road shows, if any, each furnished to you before first use, the Company has not prepared, used or referred to, and will not, without your prior consent, prepare, use or refer to, any free writing prospectus.



(d) Neither the Company nor any of its subsidiaries has sustained since the date of the most recent financial statements included or incorporated by reference in the Time of Sale Prospectus any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Time of Sale Prospectus and other than such losses or interferences as are not material to the business of the Company and its subsidiaries taken as a whole; and, since the respective dates as of which information is given in the Time of Sale Prospectus, there has not been any change in the capital stock (except for changes (i) made in the ordinary course of business consistent with past practice pursuant to the Company's equity plans in existence prior to the date of this Agreement, (ii) resulting from the exercise of options and warrants outstanding prior to the date of this Agreement and (iii) changes resulting from open-market repurchases of shares of common stock of the Company, par value \$0.001 per share ("**Stock**") pursuant to Company stock repurchase programs) or any material change in long-term debt of the Company or any of its subsidiaries, or any material adverse change, or development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, taken together as a whole, otherwise than as set forth or contemplated in the Time of Sale Prospectus.

(e) The Company and its subsidiaries listed on Schedule A hereto (the "**Significant Subsidiaries**") have good and marketable title in fee simple to all real property and good and marketable title to all material personal property owned by them, in each case free and clear of all liens, encumbrances and defects except such as are described in the Time of Sale Prospectus or such as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and any real property and buildings held under lease by the Company and its Significant Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as would not have a material adverse effect on the current or future financial position, stockholders' equity or results of operations of the Company and its subsidiaries, taken as a whole (a "**Material Adverse Effect**").

(f) The Company and its subsidiaries own, possess or have the right to use, or could obtain on commercially reasonable terms, all patents,

patent rights, patent applications, licenses, inventions, copyrights, software, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trademark and service mark applications, trade names and other intellectual property (collectively, "**Intellectual Property**") currently employed by them, except where the failure to own, possess or have the right to use, or obtain on commercially reasonable terms, such Intellectual Property would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any written notice of infringement, misappropriation of or conflict with asserted rights of others with respect to any Intellectual Property which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect on the Company and its subsidiaries, taken as a whole. Except as would not, singly or in the aggregate, have a Material Adverse Effect on the Company and its subsidiaries, taken as a whole (i) to the Company's knowledge, the conduct of the businesses of the Company and its subsidiaries has not infringed, misappropriated or otherwise violated the Intellectual Property of any other person or entity, (ii) to the Company's knowledge, none of the software or technology used by the Company or its subsidiaries in the conduct of their respective businesses has been obtained or is being used in violation of any contractual obligation binding on the Company or its subsidiaries, and (iii) the Company and each of its subsidiaries has taken reasonable steps in accordance with normal industry practice to maintain the confidentiality of all Intellectual Property, the value of which to the Company or any of its subsidiaries is contingent upon maintaining the confidentiality thereof.

(g) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, with corporate power and authority to own its properties and conduct its business as described in the Time of Sale Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except for such failures to be so qualified or in good standing as would not have a Material Adverse Effect; and each Significant Subsidiary of the Company has been duly incorporated or organized and is validly existing as a corporation in good standing under the laws of its jurisdiction of incorporation.

(h) This Agreement has been duly authorized, executed and delivered by the Company.

(i) Prior to the Closing, the Indenture will have been duly qualified under the Trust Indenture Act. The Indenture has been duly

authorized and, prior to the Closing, will have been executed and delivered by, and, assuming execution and delivery by the trustee thereto, will be a valid and binding agreement of, the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and equitable principles of general applicability.

(j) The Securities have been duly authorized and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement, will be valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and equitable principles of general applicability, and will be entitled to the benefits of the Indenture.

(k) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the Indenture and the Securities will not contravene any provision of (i) applicable law, (ii) the certificate of incorporation or by-laws of the Company, (iii) any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its subsidiaries, taken as a whole, or (iv) any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary, except for any contraventions, in the case of clauses (i), (iii) and (iv), that would not have a Material Adverse Effect, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Company of its obligations under this Agreement, the Indenture or the Securities, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Securities.

(l) Neither the Company nor any of its Significant Subsidiaries is in violation of its Certificate of Incorporation or By-laws, each as amended through the date of this Agreement, and neither the Company nor any of its subsidiaries is in default in the performance or observance of any material obligation, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, except for such defaults as would not, individually or in the aggregate, have a Material Adverse Effect.

(m) Other than as set forth in the Time of Sale Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property of the

Company or any of its subsidiaries is the subject which, if determined adversely to the Company or any of its subsidiaries, would, individually or in the aggregate, have a Material Adverse Effect; and, to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others.

(n) Each preliminary prospectus filed as part of the registration statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 under the Securities Act, complied when so filed in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder.

(o) The Company is not, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Prospectus will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(p) The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Exchange Act) that complies with the requirements of the Exchange Act and has been designed by the Company's principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The Company's internal control over financial reporting is effective based on the criteria established in "Internal Control — Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission; and the Company is not aware of any material weaknesses in its internal control over financial reporting.

(q) Since the date of the latest audited financial statements included or incorporated by reference in the Time of Sale Prospectus, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(r) The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) of the Exchange Act) that comply with the requirements of the Exchange Act; such disclosure controls and procedures have been designed to ensure that material information relating to the Company and its subsidiaries is made known to the Company's principal executive officer and principal financial officer by others within those entities; and such disclosure controls and procedures are effective such that the information relating to the Company

required to be disclosed in its reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (i) is recorded, processed, summarized, and reported within the time periods specified in Commission rules and forms, and (ii) is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure.

(s) Deloitte & Touche LLP, which has audited certain financial statements of the Company and its subsidiaries, is an independent registered public accounting firm as required by the Act and the rules and regulations of the Commission thereunder.

(t) Except in each case as would not have a Material Adverse Effect, (i) the Company and its subsidiaries (x) are, and at all prior times were, in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, requirements, decisions and orders relating to the protection of human health or safety, the environment, natural resources, hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "**Environmental Laws**"), (y) have received and are in compliance with all permits, licenses, certificates or other authorizations or approvals required of them under applicable Environmental Laws to conduct their respective businesses, and (z) have not received notice of any actual or potential liability under or relating to any Environmental Laws, including for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, (ii) there are no material costs or liabilities associated with Environmental Laws of or relating to the Company or its subsidiaries; and (iii) except as described in each of the Time of Sale Prospectus and the Prospectus, (x) there are no proceedings that are pending, or to the Company's knowledge threatened, against the Company or any of its subsidiaries under any Environmental Laws in which a governmental entity is also a party, other than such proceedings regarding which it is reasonably believed no material monetary sanctions will be imposed, and (y) to the Company's knowledge, there are no liabilities or other obligations under Environmental Laws or concerning hazardous or toxic substances or wastes, pollutants or contaminants, that would reasonably be expected to have a Material Adverse Effect.

(u) (i) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, employee, agent, representative or affiliate thereof, has taken any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment, giving or receipt of money, property, gifts or anything else of value, directly or indirectly, to any government official (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an

official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) (“**Government Official**”) in order to influence official action, or to any person in violation of any applicable anti-corruption laws, including the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “**FCPA**”); and (ii) the Company and its subsidiaries and affiliates have conducted their businesses in compliance with applicable anti-corruption laws, including the FCPA, and have instituted and maintained policies and procedures reasonably designed to promote and achieve compliance with such laws and with the representations and warranties contained herein.

(v) The operations of the Company and its subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “**Anti-Money Laundering Laws**”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(w) (i) Neither the Company nor any of its subsidiaries, nor, to the knowledge of the Company, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity (“**Person**”) that is, or is owned or controlled by a Person that is:

(A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury’s Office of Foreign Assets Control (“**OFAC**”), the United Nations Security Council (“**UNSC**”), the European Union (“**EU**”), Her Majesty’s Treasury (“**HMT**”), or other relevant sanctions authority (collectively, “**Sanctions**”), nor

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

(ii) The Company will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) For the past 5 years, the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and, except as permitted by applicable law, do not intend to engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(x) There is and has been no material failure on the part of the Company or, to the Company's knowledge, any of the Company's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(y) The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

2. *Agreements to Sell and Purchase.* The Company hereby agrees to sell to the several Underwriters, and each Underwriter, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees, severally and not jointly, to purchase from the Company the respective principal amounts of Securities set forth in Schedule II hereto opposite its name at the purchase price set forth in Schedule I hereto.

3. *Public Offering.* The Company is advised by you that the Underwriters propose to make a public offering of their respective portions of the Securities as soon after the Registration Statement and this Agreement have become effective as in your judgment is advisable. The Company is further advised by you that the Securities are to be offered to the public upon the terms set forth in the Prospectus.

4. *Payment and Delivery.* Payment for the Securities shall be made to the Company in Federal or other funds immediately available in New York City

on the closing date and time set forth in Schedule I hereto, or at such other time on the same or such other date, not later than the fifth business day thereafter, as may be designated in writing by you (the “Closing”). The time and date of such payment are hereinafter referred to as the “Closing Date.”

Payment for the Securities shall be made against delivery to you on the Closing Date for the respective accounts of the several Underwriters of the Securities registered in such names and in such denominations as you shall request in writing not later than one full business day prior to the Closing Date, with any transfer taxes payable in connection with the transfer of the Securities to the Underwriters duly paid.

5. *Conditions to the Underwriters’ Obligations.* The several obligations of the Underwriters are subject to the following conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date:

(i) no downgrading shall have occurred in the rating accorded the Company’s debt securities by any “nationally recognized statistical rating organization”, as such term is defined for purposes of Section 3(a)(62) of the Exchange Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company’s debt securities.

(ii) there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus as of the date of this Agreement that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to market the Securities on the terms and in the manner contemplated in the Time of Sale Prospectus.

(b) The Underwriters shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of the Company, to the effect set forth in Section 5(a)(i) above and to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date and that the Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.

The officer signing and delivering such certificate may rely upon his or her knowledge as to proceedings threatened.



(c) The Underwriters shall have received on the Closing Date an opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation, outside counsel for the Company, dated the Closing Date, substantially in the form attached hereto as Annex A.

(d) The Underwriters shall have received on the Closing Date, an opinion of Skadden, Arps, Slate, Meagher & Flom LLP, dated the Closing Date, in the form and substance to be agreed upon by the Managers and such counsel.

(e) The Underwriters shall have received on the Closing Date an opinion of Davis Polk & Wardwell LLP, counsel for the Underwriters, dated the Closing Date, in the form and substance to be agreed upon by the Managers and such counsel.

The opinion of counsel for the Company described in Section 5(c) above shall be rendered to the Underwriters at the request of the Company and shall so state therein.

(f) The Underwriters shall have received, on each of the date hereof and the Closing Date, a letter dated the date hereof or the Closing Date, as the case may be, in form and substance satisfactory to the Underwriters, from Deloitte & Touche LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the Time of Sale Prospectus and the Prospectus; *provided* that the letter delivered on the Closing Date shall use a "cut-off date" not earlier than three (3) days prior to the date hereof.

6. *Covenants of the Company.* The Company covenants with each Underwriter as follows:

(a) To furnish to you, without charge, a signed copy of the Registration Statement (including exhibits thereto and documents incorporated by reference therein) and to deliver to each of the Underwriters during the period mentioned in Section 6(e) or 6(f) below, as many copies of the Time of Sale Prospectus, the Prospectus, any documents incorporated by reference therein and any supplements and amendments thereto or to the Registration Statement as you may reasonably request.

(b) Before amending or supplementing the Registration Statement, the Time of Sale Prospectus or the Prospectus, to furnish to you a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which you reasonably object (unless required by applicable law).

(c) To furnish to you a copy of each proposed free writing prospectus to be prepared by or on behalf of, used by, or referred to by the Company and not to use or refer to any proposed free writing prospectus to which you reasonably object.

(d) Not to take any action that would result in an Underwriter or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Underwriter that the Underwriter otherwise would not have been required to file thereunder.

(e) If the Time of Sale Prospectus is being used to solicit offers to buy the Securities at a time when the Prospectus is not yet available to prospective purchasers and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Prospectus in order to make the statements therein, in the light of the circumstances, not misleading, or if any event shall occur or condition exist as a result of which the Time of Sale Prospectus conflicts with the information contained in the Registration Statement then on file, or if it is necessary to amend or supplement the Time of Sale Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to any dealer upon request, either amendments or supplements to the Time of Sale Prospectus so that the statements in the Time of Sale Prospectus as so amended or supplemented will not, in the light of the circumstances when the Time of Sale Prospectus is delivered to a prospective purchaser, be misleading or so that the Time of Sale Prospectus, as amended or supplemented, will no longer conflict with the Registration Statement, or so that the Time of Sale Prospectus, as amended or supplemented, will comply with applicable law.

(f) If, during such period after the first date of the public offering of the Securities, the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is required by law to be delivered in connection with sales by an Underwriter or dealer, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is delivered to a purchaser, not misleading, or if it is necessary to amend or supplement the Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to the dealers (whose names and addresses you will furnish to the

Company) to which Securities may have been sold by you on behalf of the Underwriters and to any other dealers upon request, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law.

(g) To endeavor to qualify the Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as you shall reasonably request; provided that the Company shall not be required to (i) qualify as a foreign corporation in any jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction, or (iii) subject itself to taxation in any jurisdiction if it is not otherwise so subject.

(h) To make generally available to the Company's security holders and to you as soon as practicable an earnings statement covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement which shall satisfy the provisions of Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder.

(i) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid the following expenses: (i) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the registration and delivery of the Securities under the Securities Act and all other fees or expenses of the Company in connection with the preparation and filing of the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, any free writing prospectus prepared by or on behalf of, used by, or referred to by the Company and amendments and supplements to any of the foregoing, including the filing fees payable to the Commission relating to the Securities (within the time required by Rule 456(b)(1), if applicable), all printing costs associated therewith, and the mailing and delivering of copies thereof to the Underwriters and dealers, in the quantities hereinabove specified, (ii) all costs and expenses related to the transfer and delivery of the Securities to the Underwriters, including any transfer or other taxes payable thereon, (iii) the cost of printing or producing any Blue Sky or legal investment memorandum in connection with the offer and sale of the Securities under state securities laws and all expenses in connection with the qualification of the Securities for offer and sale under state securities laws as provided in Section 6(g) hereof, including filing fees and the reasonable fees and disbursements of counsel

for the Underwriters in connection with such qualification and in connection with the Blue Sky or legal investment memorandum, (iv) any fees charged by the rating agencies for the rating of the Securities, (v) the cost of the preparation, issuance and delivery of the Securities, (vi) the costs and charges of any trustee, transfer agent, registrar or depository, (vii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Securities, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives and officers of the Company and any such consultants, (viii) the document production charges and expenses associated with printing this Agreement and (ix) all other costs and expenses incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section. It is understood, however, that except as provided in this Section, Section 8 entitled "Indemnity and Contribution," and the last paragraph of Section 10 below, the Underwriters will pay all of their costs and expenses, including fees and disbursements of their counsel, transfer taxes payable on resale of any of the Securities by them and any advertising expenses connected with any offers they may make.

(j) During the period beginning on the date hereof and continuing to and including the Closing Date, not to offer, sell, contract to sell or otherwise dispose of any debt securities of the Company or warrants to purchase or otherwise acquire debt securities of the Company substantially similar to the Securities (other than (i) the Securities, (ii) commercial paper issued in the ordinary course of business or (iii) securities or warrants permitted with the prior written consent of the Managers identified in Schedule I with the authorization to release this lock-up on behalf of the Underwriters).

(k) To prepare a final term sheet relating to the offering of the Securities, containing only information that describes the final terms of the Securities or the offering in a form consented to by the Managers, and to file such final term sheet within the period required by Rule 433(d)(5)(ii) under the Securities Act following the date the final terms have been established for the offering of the Securities.

7. *Covenants of the Underwriters.* Each Underwriter severally covenants with the Company not to take any action that would result in the Company being required to file with the Commission under Rule 433(d) a free writing prospectus prepared by or on behalf of such Underwriter that otherwise would not be required to be filed by the Company thereunder, but for the action of the Underwriter.

8. *Indemnity and Contribution.* (a) The Company agrees to indemnify and hold harmless each Underwriter, each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act and each affiliate of any Underwriter within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, any preliminary prospectus, the Time of Sale Prospectus, any issuer free writing prospectus as defined in Rule 433(h) under the Securities Act, any Company information that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act, any “road show” as defined in Rule 433(h) under the Securities Act (a “road show”), or the Prospectus or any amendment or supplement thereto, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein.

(b) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors, its officers who sign the Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to such Underwriter, but only with reference to information relating to such Underwriter furnished to the Company in writing by such Underwriter through you expressly for use in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, any issuer free writing prospectus, road show or the Prospectus or any amendment or supplement thereto.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 8(a) or 8(b), such person (the “**indemnified party**”) shall promptly notify the person against whom such indemnity may be sought (the “**indemnifying party**”) in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel

related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by the Managers authorized to appoint counsel under this Section set forth in Schedule I hereto, in the case of parties indemnified pursuant to Section 8(a), and by the Company, in the case of parties indemnified pursuant to Section 8(b). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) To the extent the indemnification provided for in Section 8(a) or 8(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Securities or (ii) if the allocation provided by clause 8(d)(i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 8(d)(i) above but also the relative fault of the Company on the one hand and of the Underwriters on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other

relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other hand in connection with the offering of the Securities shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Securities (before deducting expenses) received by the Company and the total underwriting discounts and commissions received by the Underwriters bear to the aggregate initial public offering price of the Securities as set forth in the Prospectus. The relative fault of the Company on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Underwriters' respective obligations to contribute pursuant to this Section 8 are several in proportion to the respective principal amounts of Securities they have purchased hereunder, and not joint.

(e) The Company and the Underwriters agree that it would not be just or equitable if contribution pursuant to this Section 8 were determined by *pro rata* allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 8(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 8(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 8 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(f) The indemnity and contribution provisions contained in this Section 8 and the representations, warranties and other statements of the Company contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii)

any investigation made by or on behalf of any Underwriter, any person controlling any Underwriter or any affiliate of any Underwriter or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Securities.

9. *Termination.* The Underwriters may terminate this Agreement by notice given by you to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on, or by, as the case may be, any of the New York Stock Exchange, the American Stock Exchange or the NASDAQ Global Market, (ii) trading of any securities of the Company shall have been suspended on the NASDAQ Global Market, (iii) a material disruption in securities settlement, payment or clearance services in the United States shall have occurred, (iv) any moratorium on commercial banking activities shall have been declared by Federal or New York State authorities or (v) there shall have occurred any outbreak or escalation of hostilities, or any change in financial markets or any calamity or crisis that, in your reasonable judgment, is material and adverse and which, singly or together with any other event specified in this clause (v), makes it, in your reasonable judgment, impracticable or inadvisable to proceed with the offer, sale or delivery of the Securities on the terms and in the manner contemplated in the Time of Sale Prospectus or the Prospectus.

10. *Effectiveness; Defaulting Underwriters.* This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If, on the Closing Date, any one or more of the Underwriters shall fail or refuse to purchase Securities that it has or they have agreed to purchase hereunder on such date, and the aggregate principal amount of Securities which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the aggregate principal amount of the Securities to be purchased on such date, the other Underwriters shall be obligated severally in the proportions that the principal amount of Securities set forth opposite their respective names in Schedule II bears to the aggregate principal amount of Securities set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as you may specify, to purchase the Securities which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date; *provided* that in no event shall the principal amount of Securities that any Underwriter has agreed to purchase pursuant to this Agreement be increased pursuant to this Section 10 by an amount in excess of one-ninth of such principal amount of Securities without the written consent of such Underwriter. If, on the Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Securities and the aggregate principal amount of Securities with respect to which such default occurs is more than one-tenth of the aggregate principal amount of Securities to be purchased on such date, and arrangements satisfactory to you and the Company for the purchase of such Securities are not



made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Company. In any such case either you or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement, in the Time of Sale Prospectus, in the Prospectus or in any other documents or arrangements may be effected. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

If this Agreement shall be terminated by the Underwriters, or any of them, because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions contained in Section 5 of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement the Company will reimburse the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by such Underwriters in connection with this Agreement or the offering contemplated hereunder.

11. *Entire Agreement.* (a) This Agreement represents the entire agreement between the Company and the Underwriters with respect to the preparation of any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, the conduct of the offering, and the purchase and sale of the Securities.

(b) The Company acknowledges that in connection with the offering of the Securities: (i) the Underwriters have acted at arms length, are not agents of, and owe no fiduciary duties to, the Company or any other person, (ii) the Underwriters owe the Company only those duties and obligations set forth in this Agreement and prior written agreements (to the extent not superseded by this Agreement), if any, and (iii) the Underwriters may have interests that differ from those of the Company. The Company waives to the full extent permitted by applicable law any claims it may have against the Underwriters arising from an alleged breach of fiduciary duty in connection with the offering of the Securities.

12. *Counterparts.* This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

13. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

14. *Headings.* The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

15. *Notices.* All communications hereunder shall be in writing and effective only upon receipt and if to the Underwriters shall be delivered, mailed or sent to you at the address set forth in Schedule I hereto; and if to the Company shall be delivered, mailed or sent to the address set forth in Schedule I hereto.

Very truly yours,

NETAPP, INC.

By: /s/ Ronald J. Pasek

Name: Ronald J. Pasek

Title: Executive Vice President and  
Chief Financial Officer

Accepted as of the date hereof:

J.P. MORGAN SECURITIES LLC  
MORGAN STANLEY & CO. LLC

Acting severally on behalf of themselves and  
the several Underwriters named in  
Schedule II hereto

By: J.P. MORGAN SECURITIES LLC

By: /s/Stephen L. Sheiner

Name: Stephen L. Sheiner

Title: Executive Director

By: MORGAN STANLEY & CO. LLC

By: /s/Yurij Slyz

Name: Yurij Slyz

Title: Executive Director

*[Signature Page to Underwriting Agreement]*

**Significant Subsidiaries**

NetApp B.V.  
NA Technology C.V.  
NetApp Global Limited  
NetApp Holding & Manufacturing B.V. NAHM  
NetApp Holdings Ltd.  
SolidFire Holdings, C.V.  
Sonoma Holdings C.V.  
NetCache, Inc.

Managers:  
Managers authorized to release lock-up under Section 6: J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC  
Managers authorized to appoint counsel under Section 8(c): J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC

Indenture: Indenture dated as of December 12, 2012, between the Company and the Trustee, as supplemented by the Third Supplemental Indenture to be dated as of the date the Securities are issued, between the Company and the Trustee

Trustee: U.S. Bank National Association

Registration Statement File No.: 333- 208311

Time of Sale Prospectus

1. Prospectus dated December 2, 2015 relating to the Shelf Securities
2. Preliminary Prospectus dated September 26, 2017 relating to the Securities
3. Free writing prospectus dated September 26, 2017 containing a description of certain terms of the Securities filed by the Company under Rule 433(d) of the Securities Act

Closing Date and Time: September 29, 2017, 10:00 a.m. New York City time

Closing Location: Davis Polk & Wardwell LLP  
1600 El Camino Real Suite 100  
Menlo Park, CA 94025

Address for Notices to Underwriters: J.P. Morgan Securities LLC  
383 Madison Avenue  
New York, New York 10179  
Attention: Investment Grade Syndicate Desk- 3rd Floor  
Telephone No: 212-834-4533

Morgan Stanley & Co. LLC  
1585 Broadway  
New York, New York 10036  
Attention: [        ]  
Facsimile: [        ]

Address for Notices to the Company:

NetApp, Inc.  
495 East Java Drive,  
Sunnyvale, California 94089  
Attn: General Counsel  
Telephone: (408) 822-6000

Securities to be purchased:

2.000% Senior Notes due 2019  
3.300% Senior Notes due 2024

Aggregate Principal Amount:

\$400,000,000 2.000% Senior Notes due 2019  
\$400,000,000 3.300% Senior Notes due 2024

Purchase Price:

99.525% of the principal amount of the 2.000% Senior Notes due 2019, plus accrued interest, if any, from September 29, 2017

99.350% of the principal amount of the 3.300% Senior Notes due 2024, plus accrued interest, if any, from September 29, 2017

Maturity Date:

2.000% Senior Notes due 2019: September 27, 2019

3.300% Senior Notes due 2024: September 29, 2024

Interest Rate:

2.000% Senior Notes due 2019: 2.000% per annum, accruing from September 29, 2017

3.300% Senior Notes due 2024: 3.300% per annum, accruing from September 29, 2017

Interest Payment Dates:

2.000% Senior Notes due 2019: September 27 and March 27, commencing March 27, 2018

3.300% Senior Notes due 2024: September 29 and March 29, commencing March 29, 2018

**SCHEDULE II**

<b>Underwriter</b>	<b>Principal Amount of 2.000% Senior Notes due 2019 to be Purchased</b>	<b>Principal Amount of 3.300% Senior Notes due 2024 to be Purchased</b>
J.P. MORGAN SECURITIES LLC	\$ 92,000,000	\$ 92,000,000
MORGAN STANLEY & CO. LLC	\$ 96,000,000	\$ 96,000,000
CITIGROUP GLOBAL MARKETS INC.	\$ 12,000,000	\$ 44,000,000
GOLDMAN SACHS & CO. LLC	\$ 44,000,000	\$ 44,000,000
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED	\$ 44,000,000	\$ 44,000,000
MUFG SECURITIES AMERICAS INC.	\$ 44,000,000	\$ 12,000,000
WELLS FARGO SECURITIES, LLC	\$ 44,000,000	\$ 44,000,000
BNP PARIBAS SECURITIES CORP.	\$ 12,000,000	\$ 12,000,000
STANDARD CHARTERED BANK	\$ 12,000,000	\$ 12,000,000
Total	<u>\$400,000,000</u>	<u>\$400,000,000</u>



**Form of WSGR Opinion**

1. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of Delaware, with corporate power and authority to own its property and to conduct its business as described in the Time of Sale Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of California.
2. The Underwriting Agreement has been duly authorized, executed and delivered by the Company.
3. The Indenture has been duly qualified under the Trust Indenture Act and has been duly authorized, executed and delivered by, and, assuming the due authorization, execution and delivery thereof by the Trustee, is a valid and binding agreement of, the Company, enforceable in accordance with its terms.
4. The Notes have been duly authorized and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Underwriters in accordance with the terms of the Underwriting Agreement, will be valid and binding obligations of the Company, enforceable in accordance with their terms and will be entitled to the benefits of the Indenture.
5. The execution and delivery by the Company of, and the performance by the Company of its obligations under, the Underwriting Agreement, the Indenture and the Notes do not result in a breach or violation by the Company of any of the terms or provisions of any Reviewed Agreement and do not violate any Reviewed Judgment, nor will such action result in any violation by the Company of (i) its Certificate of Incorporation or the Bylaws, or (ii) any U.S. federal or New York, California or Delaware (under the DGCL) state statute, or any rule, order or regulation of any U.S. federal or New York, California or Delaware (under the DGCL) state court or governmental agency or body.
6. No consent, approval, authorization or order of, or qualification with, any U.S. federal, New York, California or Delaware (solely with respect to the DGCL) governmental body or agency is required for the performance by the Company of its obligations under the Underwriting Agreement or the Indenture, or the offer, sale or issuance of the Notes, except as has been made or obtained and such registration as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Notes.
7. The statements in (A) the Time of Sale Prospectus and the Prospectus under the captions "Description of Notes", (B) the Time of Sale Prospectus and the Prospectus under the captions "Underwriting", (C) the Time of Sale

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Prospectus and the Prospectus under the captions “Material U.S. Federal Income Tax Considerations” and (D) the Registration Statement in Item 15, in each case insofar as such statements constitute summaries of legal matters, fairly summarize the matters referred to therein in all material respects.

NETAPP, INC.,  
as Issuer

and

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

THIRD SUPPLEMENTAL INDENTURE  
Dated as of September 29, 2017

\$400,000,000 of 2.000% Senior Notes due 2019  
and  
\$400,000,000 of 3.300% Senior Notes due 2024

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THIS THIRD SUPPLEMENTAL INDENTURE (the “**Third Supplemental Indenture**”) is dated as of September 29, 2017 between NETAPP, INC., a Delaware corporation (the “**Company**”) and U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “**Trustee**”).

## RECITALS

A. The Company and the Trustee executed and delivered an Indenture, dated as of December 12, 2012, (the “**Base Indenture**” and, as supplemented by the Third Supplemental Indenture, the “**Indenture**”), to provide for the issuance by the Company from time to time of unsubordinated debt securities evidencing its unsecured indebtedness.

B. Pursuant to Board Resolution, the Company has authorized the issuance of \$400,000,000 aggregate principal amount of 2.000% Senior Notes due 2019 (the “**2019 Notes**”) and \$400,000,000 aggregate principal amount of 3.300% Senior Notes due 2024 (the “**2024 Notes**” and together with the 2019 Notes, the “**Notes**”).

C. The entry into this Third Supplemental Indenture by the parties hereto is in all respects authorized by the provisions of the Base Indenture.

D. The Company desires to enter into this Third Supplemental Indenture pursuant to Section 9.01 of the Base Indenture to establish the terms of the Notes in accordance with Section 2.01 of the Base Indenture and to establish the form of the Notes in accordance with Sections 2.01(a)(10) and 2.02 of the Base Indenture.

E. All things necessary to make this Third Supplemental Indenture a valid and legally binding agreement according to its terms have been done.

NOW, THEREFORE, for and in consideration of the foregoing premises, the Company and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective holders from time to time of the Notes as follows:

## ARTICLE 1

### Section 1.01. Terms of the Notes.

The following terms relate to the Notes:

(a) The 2019 Notes shall constitute a series of securities having the title of “2.000% Senior Notes due 2019,” and the 2024 Notes shall constitute a separate series of securities having the title “3.300% Senior Notes due 2024”.

(b) The aggregate principal amounts of the 2019 Notes (the “**Initial 2019 Notes**”) and the 2024 Notes (the “**Initial 2024 Notes**” and together with the Initial 2019 Notes, the “**Initial Notes**”) that may be initially authenticated and delivered under the Indenture shall be \$400,000,000 and \$400,000,000, respectively. The Company may from time to time, without the consent of the Holders of the applicable series of Notes,

issue additional 2019 Notes (in any such case, “**Additional 2019 Notes**”) or additional 2024 Notes (in any such case, “**Additional 2024 Notes**”) having the same ranking and the same interest rate, maturity and other terms as the Initial 2019 Notes or the Initial 2024 Notes, as applicable. Any Additional 2019 Notes and the Initial 2019 Notes and any Additional 2024 Notes and the Initial 2024 Notes, as the case may be, shall each constitute a single series under the Indenture and all references to the 2019 Notes shall include the Initial 2019 Notes and any Additional 2019 Notes and all references to the 2024 Notes shall include the Initial 2024 Notes and any Additional 2024 Notes, unless the context otherwise requires; provided that if such Additional 2019 Notes or Additional 2024 Notes are not fungible with the Initial 2019 Notes or Initial 2024 Notes, as applicable, for U.S. federal income tax purposes, the applicable Additional Notes will have a separate CUSIP number. The aggregate principal amounts of the Additional 2019 Notes and Additional 2024 Notes shall be unlimited.

(c) The entire Outstanding principal of the 2019 Notes shall be payable on September 27, 2019, and the entire Outstanding principal of the 2024 Notes shall be payable on September 29, 2024.

(d) The rate at which the 2019 Notes shall bear interest shall be 2.000% per year. The date from which interest shall accrue on the 2019 Notes shall be the most recent Interest Payment Date to which interest has been paid or provided for or, if no interest has been paid, from September 29, 2017. The Interest Payment Dates for the 2019 Notes shall be March 27 and September 27 of each year, beginning March 27, 2018. Interest shall be payable on each Interest Payment Date to the holders of record at the close of business on the March 12 and September 12 prior to each Interest Payment Date (with respect to the 2019 Notes, each a “**regular record date**”). The basis upon which interest shall be calculated shall be that of a 360-day year consisting of twelve 30-day months.

(e) The rate at which the 2024 Notes shall bear interest shall be 3.300% per year. The date from which interest shall accrue on the 2024 Notes shall be the most recent Interest Payment Date to which interest has been paid or provided for or, if no interest has been paid, from September 29, 2017. The Interest Payment Dates for the 2024 Notes shall be March 29 and September 29 of each year, beginning March 29, 2018. Interest shall be payable on each Interest Payment Date to the holders of record at the close of business on the March 14 and September 14 prior to each Interest Payment Date (with respect to the 2024 Notes, each a “**regular record date**”). The basis upon which interest shall be calculated shall be that of a 360-day year consisting of twelve 30-day months.

(f) The Notes shall be issuable in whole in the form of one or more registered Global Securities, and the Depositary for such Global Securities shall be The Depository Trust Company, New York, New York. The Notes shall be substantially in the form attached hereto as Exhibit A (2019 Notes) and Exhibit B (2024 Notes), which are herein incorporated by reference. The Notes shall be issuable in denominations of \$2,000 or any integral multiple of \$1,000 in excess thereof.

(g) Either series of Notes may be redeemed in whole or in part at the option of the Company prior to their respective maturity dates, as provided in Section 1.03 hereof.

(h) The Notes will not have the benefit of any sinking fund.

(i) Except as provided herein, the holders of the Notes shall have no special rights in addition to those provided in the Base Indenture upon the occurrence of any particular events.

(j) The Notes will be general unsecured and unsubordinated obligations of the Company and will be ranked equally among themselves.

(k) The Notes are not convertible into shares of common stock or other securities of the Company.

(l) The restrictive covenant set forth in Section 1.04 hereof shall be applicable to the Notes.

(m) The Designated Currency of the Notes shall be Dollars.

#### Section 1.02. Additional Defined Terms.

As used herein, the following defined terms shall have the following meanings with respect to the Notes only:

**“Change of Control”** means the occurrence of any of the following: (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company and its subsidiaries taken as a whole to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) other than to the Company or one or more of its direct or indirect subsidiaries; (2) the adoption of a plan relating to the Company’s liquidation or dissolution; (3) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” (as defined above), including any group defined as a person for the purpose of Section 13(d)(3) of the Exchange Act, becomes the beneficial owner, directly or indirectly, of more than 50% of the then outstanding number of shares of Voting Stock of the Company; or (4) the Company consolidates with, or merges with or into, any “person” (as defined above), or any “person” (as defined above) consolidates with, or merges with or into, the Company, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Company or the outstanding Voting Stock of such other “person” (as defined above) is converted into or exchanged for cash, securities or other property, other than any such transaction where the shares of the Company’s Voting Stock outstanding immediately prior to such transaction constitute, or are converted into or exchanged for, a majority of the Voting Stock of the surviving “person” (as defined above) or parent entity thereof immediately after giving effect to such transaction. Notwithstanding the foregoing, a transaction shall not be considered to be a Change of Control if (a) the Company becomes a direct or indirect wholly-owned subsidiary of another person and (b) immediately following that transaction, a majority of the Voting Stock of such person is held by the direct or indirect holders of the Voting Stock of the Company immediately prior to such transaction and in substantially the same proportion as immediately prior to such transaction.

**“Change of Control Repurchase Event”** means the occurrence of both a Change of Control and a Ratings Event.

**“Comparable Treasury Issue”** means the United States Treasury security selected by the Independent Investment Banker as having an actual or interpolated maturity comparable to the remaining term of the 2019 Notes or the 2024 Notes to be redeemed, as applicable, that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the 2019 Notes or the 2024 Notes to be redeemed, as applicable.

**“Comparable Treasury Price”** means, with respect to any Optional Redemption Date, (a) the arithmetic average of the Reference Treasury Dealer Quotations for such Optional Redemption Date, after excluding the highest and lowest of the Reference Treasury Dealer Quotations, or (b) if the Company obtains fewer than four Reference Treasury Dealer Quotations, the arithmetic average of those quotations.

**“Independent Investment Banker”** means the Reference Treasury Dealer appointed by the Company as Independent Investment Banker (initially, J.P. Morgan Securities LLC or Morgan Stanley & Co. LLC).

**“Investment Grade”** means a rating of Baa3 or better by Moody’s (or its equivalent under any successor Rating Categories of Moody’s); a rating of BBB- or better by S&P (or its equivalent under any successor Rating Categories of S&P); and the equivalent Investment Grade credit rating from any additional Rating Agency or Rating Agencies selected by the Company.

**“Moody’s”** means Moody’s Investors Service, Inc.

**“Optional Redemption Date”** when used with respect to any Note to be redeemed at the Company’s option, means the date fixed for such redemption by or pursuant to Section 1.03 of this Third Supplemental Indenture.

**“Optional Redemption Price”** when used with respect to any Note to be redeemed at the Company’s option, means the price at which it is to be redeemed pursuant to Section 1.03(b) or Section 1.03(c), as the case may be, of this Third Supplemental Indenture.

**“Rating Agency”** means (1) each of Moody’s and S&P; and (2) if either of Moody’s or S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available for any reason, a “nationally recognized statistical rating organization” within the meaning of Rule 3(a)(62) of the Exchange Act, selected by the Company (as certified by a resolution of the Board of Directors) as a replacement agency for Moody’s or S&P, or both of them, as the case may be.

**“Rating Category”** means (i) with respect to S&P, any of the following categories: BBB, BB, B, CCC, CC, C and D (or equivalent successor categories); (ii) with respect to Moody’s, any of the following categories: Baa, Ba, B, Caa, Ca, C and D (or equivalent successor categories); and (iii) the equivalent of any such category of S&P or Moody’s used by another Rating Agency. In determining whether the rating of the Notes has decreased by one or more gradations, gradations within Rating Categories (+ and – for S&P; 1, 2 and 3 for Moody’s; or the equivalent gradations for another Rating Agency) shall be taken into account (e.g., with respect to S&P, a decline in a rating from BB+ to BB, as well as from BB- to B+, will constitute a decrease of one gradation).

**“Rating Date”** means the date of the first public announcement by the Company of the occurrence of a Change of Control (or pending Change of Control).

**“Ratings Event”** means the occurrence of the events described in (a), (b) or (c) below during the period commencing on a Rating Date and ending 60 days following the occurrence of such Change of Control (which period shall be extended so long as the rating of the Notes is under publicly announced consideration for a possible downgrade by any of the Rating Agencies): (a) in the event the applicable Notes are rated by both Rating Agencies on the Rating Date as Investment Grade, the rating of the applicable Notes shall be reduced so that the applicable Notes are rated below Investment Grade by both Rating Agencies, (b) in the event the applicable Notes (1) are rated Investment Grade by one Rating Agency and below Investment Grade by the other Rating Agency on the Rating Date, the rating of the applicable Notes by such Rating Agency rating the Notes as Investment Grade shall be decreased by one or more gradations (including gradations within Rating Categories, as well as between Rating Categories) so that the applicable Notes are then rated below Investment Grade by both Rating Agencies or (2) are rated below Investment Grade by both Rating Agencies on the Rating Date, the rating of the applicable Notes by either Rating Agency shall be decreased by one or more gradations (including gradations within Rating Categories, as well as between Rating Categories) or (c) fewer than two Rating Agencies provide a rating for the Applicable Notes.

**“Reference Treasury Dealer”** means each of (i) J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC and their respective successors and (ii) two other nationally recognized investment banking firms (or their affiliates) that the Company selects in connection with the particular redemption, and their respective successors, provided that if at any time any of the above is not a primary U.S. Government securities dealer in the United States, the Company will substitute that entity with another nationally recognized investment banking firm that the Company selects that is a primary U.S. Government securities dealer.

**“Reference Treasury Dealer Quotations”** means, with respect to each Reference Treasury Dealer and any Optional Redemption Date, the arithmetic average, as determined by the Company, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Company by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third business day preceding such Optional Redemption Date.



“**Remaining Scheduled Payments**” means, with respect to any Note to be redeemed, the remaining scheduled payments of the principal thereof and interest thereon that would be due after the related Optional Redemption Date but for such redemption; provided, however, that, if such Optional Redemption Date is not an interest payment date with respect to such Note, the amount of the next scheduled interest payment thereon will be reduced by the amount of interest accrued thereon to such Optional Redemption Date.

“**S&P**” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

“**Treasury Rate**” means, for any Optional Redemption Date, the rate per annum equal to the semi-annual equivalent yield to maturity or interpolated yield to maturity, computed as the third business day immediately preceding that Optional Redemption Date, of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such Optional Redemption Date.

Section 1.03. Optional Redemption.

(a) The provisions of Article Three of the Base Indenture, as amended by the provisions of this Third Supplemental Indenture, shall apply to the Notes with respect to this Section 1.03.

(b) The Notes shall be redeemable in whole or in part at any time prior to September 27, 2019, in the case of the 2019 Notes, and July 29, 2024, in the case of the 2024 Notes, at the Company’s option. Upon redemption of Notes of either series pursuant to this Section 1.03(b), the Company shall pay an Optional Redemption Price equal to the greater of:

(i) 100% of the aggregate principal amount of the Notes to be redeemed, and

(ii) the sum of the present values of the Remaining Scheduled Payments of the Notes to be redeemed, discounted to the Optional Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) using a discount rate equal to the Treasury Rate plus 10 basis points, in the case of 2019 Notes, and 20 basis points, in the case of the 2024 Notes

*plus*, in addition to such Optional Redemption Price, in each case, accrued and unpaid interest thereon to, but excluding, the Optional Redemption Date. Notwithstanding the foregoing, installments of interest whose Stated Maturity is on or prior to the Optional Redemption Date shall be payable on the applicable Interest Payment Date to the Holders of such Notes registered as such at the close of business on the applicable record date pursuant to the Notes and the Indenture.

(c) The 2024 Notes shall also be redeemable in whole or in part at any time on or after July 29, 2024 and prior to their maturity date at the Company's option. Upon redemption of the 2024 Notes pursuant to this Section 1.03(c), the Company shall pay an Optional Redemption Price equal to 100% of the principal amount of the 2024 Notes to be redeemed, plus accrued and unpaid interest thereon to, but excluding, the Optional Redemption Date. Notwithstanding the foregoing, installments of interest whose Stated Maturity is on or prior to the Optional Redemption Date shall be payable on the applicable Interest Payment Date to the Holders of such 2024 Notes registered as such at the close of business on the applicable record date pursuant to the 2024 Notes and the Indenture.

(d) On and after the Optional Redemption Date for the Notes, interest shall cease to accrue on the Notes or any portion thereof called for redemption, unless the Company defaults in the payment of the Optional Redemption Price and accrued interest, if any. On or before 12:00 p.m., New York City time, on the Optional Redemption Date for the Notes, the Company shall deposit with the Trustee or a paying agent funds sufficient to pay the Optional Redemption Price of the Notes to be redeemed on the Optional Redemption Date, and (except if the date fixed for redemption shall be an Interest Payment Date) accrued and unpaid interest, if any. If less than all of a series of Notes are to be redeemed, the Notes shall be redeemed in accordance with Section 3.02 of the Base Indenture.

(e) Notice of any optional redemption shall be electronically delivered or mailed at least 30 days but not more than 60 days before the Optional Redemption Date to each holder of the Notes to be redeemed; provided, however, that the Company shall notify the Trustee of the Optional Redemption Date at least 15 days prior to the date of the giving of such notice (unless a shorter notice shall be satisfactory to the Trustee). Such notice shall be provided in accordance with Section 3.02 of the Base Indenture; *provided that*, in lieu of mailing, notices may be electronically delivered to Holders of the Notes at their last electronic mailing addresses as they shall appear upon the Security Register. If the Optional Redemption Price cannot be determined at the time such notice is to be given, the actual Optional Redemption Price, calculated as described above in clause (b), shall be set forth in an Officers' Certificate of the Company delivered to the Trustee no later than two (2) Business Days prior to the Optional Redemption Date. Notice of redemption having been given as provided in the Indenture, the Notes called for redemption shall, on the Optional Redemption Date, become due and payable at the Optional Redemption Price, and accrued and unpaid interest, if any, to, but excluding, the Optional Redemption Date.

#### Section 1.04. Additional Covenant.

The following additional covenant shall apply with respect to the Notes so long as any of the Notes remain Outstanding:

(a) Change of Control Repurchase Event.

(i) If a Change of Control Repurchase Event occurs with respect to the Notes, unless the Company shall have exercised its option to redeem the Notes in full, as set forth in Section 1.03 of this Third Supplemental Indenture, or the Company shall have defeased the Notes or have satisfied and discharged the Notes, as set forth in Article XI of the Base Indenture, the Company shall make an offer (the “**Change of Control Offer**”) to each holder of the Notes to repurchase any and all of such holder’s Notes at a repurchase price in cash equal to 101% of the aggregate principal amount of Notes to be repurchased (such principal amount to be equal to \$2,000 or an integral multiple of \$1,000 in excess of \$2,000), plus accrued and unpaid interest, if any, on the Notes to be repurchased up to, but excluding, the date of repurchase (the “**Change of Control Payment**”). Within 30 days following any Change of Control Repurchase Event, or, at the option of the Company, prior to any Change of Control, but after the public announcement of such Change of Control, the Company shall mail or electronically deliver notice to the Holders of the Notes (with a copy to the Trustee), which shall (A) describe the transaction or transactions that constitute or may constitute the Change of Control Repurchase Event; (B) offer to repurchase the Notes on the date specified in the notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is mailed or electronically delivered (the “**Change of Control Payment Date**”); (C) state the instructions, as determined by the Company, that a Holder must follow in order to have its Notes repurchased; and (D) state that the offer to repurchase is conditioned on the Change of Control Repurchase Event, if mailed or electronically delivered prior to the date of consummation of the Change of Control. Notwithstanding the foregoing, installments of interest whose Stated Maturity is on or prior to the Change of Control Payment Date shall be payable on the applicable Interest Payment Date to the Securityholders of such Notes registered as such at the close of business on the applicable record date pursuant to the Notes and the Indenture.

(ii) On the Change of Control Payment Date, the Company shall, to the extent lawful:

(A) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(B) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(C) deliver or cause to be delivered to the Trustee the Notes properly accepted, together with an Officers’ Certificate stating (1) the aggregate principal amount of each series of Notes being repurchased, (2) that all conditions precedent contained herein to make a Change of Control Offer have been complied with and (3) that the Change of Control Offer has been made in compliance with the Indenture.

(iii) Notwithstanding the foregoing, the Company will not be required to make an offer to repurchase the Notes upon a Change of Control Repurchase Event, if a third party makes such an offer in the manner, at the times and otherwise in compliance with the requirements for an offer made by the Company and such third party purchases all Notes properly tendered and not withdrawn under its offer.

(iv) If Holders of not less than 95% in aggregate principal amount of the applicable series of Outstanding Notes validly tender and do not withdraw such Notes in an offer to repurchase the Notes upon a Change of Control Repurchase Event and the Company, or any third party making an offer to purchase the Notes upon a Change of Control Repurchase Event in lieu of the Company pursuant to Section 1.04 purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company shall have the right, upon not less than 30 nor more than 60 days' prior written notice, given not more than 30 days following the Change of Control Payment Date, to redeem all Notes of that series that remain outstanding following such purchase at a redemption price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the date of redemption.

(v) The Company shall comply in all material respects with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control Repurchase Event. To the extent that the provisions of any such securities laws or regulations conflict with the Change of Control Offer provisions of this Section 1.04, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 1.04 by virtue of any such conflict.

#### Section 1.05. Events of Default.

With respect to the Notes, "**Event of Default**" means any one or more of the following events that has occurred and is continuing:

(a) default in the payment of the principal or any premium on any Note of that series when due (whether at maturity, upon acceleration, redemption or otherwise);

(b) default for 30 days in the payment of interest on any Note of such series when due;

(c) failure by the Company to observe or perform any term of the Indenture (other than those referred to in (a) or (b) above and other than a covenant or agreement included in this Third Supplemental Indenture not for the benefit of such series) for a period of 60 days after the Company receives a notice of default stating that the Company is in breach. The notice must be sent by either the Trustee or Holders of not less than 25% of the principal amount of the Notes of the affected series;

(d) failure by the Company to repurchase the Notes tendered for repurchase following the occurrence of a Change of Control Repurchase Event in conformity with Section 1.04 of this Third Supplemental Indenture;

(e) the entry by a court having competent jurisdiction of:

(i) an order for relief in respect of the Company in an involuntary proceeding under any Bankruptcy Law and such order shall remain unstayed and in effect for a period of 60 consecutive days; or

(ii) a final and non-appealable order appointing a Custodian, of the Company, or ordering the winding up or liquidation of the affairs of the Company, and such order shall remain unstayed and in effect for a period of 60 consecutive days;

(f) the commencement by the Company of a voluntary proceeding under any Bankruptcy Law or the consent by the Company to the entry of a decree or order for relief in an involuntary proceeding under any Bankruptcy Law or the filing by the Company of a consent to an order for relief in any involuntary proceeding under any Bankruptcy Law or to the appointment of a Custodian or the making by the Company of an assignment for the benefit of creditors;

(g) (i) a failure to make any payment at maturity, including any applicable grace period, of any indebtedness of the Company (other than indebtedness of the Company owing to any of its direct or indirect Subsidiaries) in an amount in excess of \$100,000,000 and continuance of this failure to pay or (ii) a default on any indebtedness of the Company (other than indebtedness owing to any of its direct or indirect Subsidiaries), which default results in the acceleration of such indebtedness in an amount in excess of \$100,000,000 without such indebtedness having been discharged or the acceleration having been cured, waived, rescinded or annulled, in the case of clause (i) or (ii) above, for a period of 30 days after written notice thereof to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in principal amount of Outstanding Notes of such series (including any Additional Notes), provided, however, that if any failure, default or acceleration referred to in clause (i) or (ii) above ceases or is cured, waived, rescinded or annulled, then the Event of Default will be deemed cured.

## ARTICLE 2 MISCELLANEOUS

### Section 2.01. Definitions.

Capitalized terms used but not defined in this Third Supplemental Indenture shall have the meanings ascribed thereto in the Base Indenture.

### Section 2.02. Confirmation of Indenture.

The Base Indenture, as supplemented and amended by this Third Supplemental Indenture, is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect, including, without limitation, the legal and covenant defeasance provisions set forth in Section 11.03; provided that

references in Section 11.03 of the Base Indenture to “Holders” shall be deemed to be to “beneficial owners.” The Base Indenture, this Third Supplemental Indenture and all indentures supplemental thereto shall be read, taken and construed as one and the same instrument.

Section 2.03. Concerning the Trustee.

In carrying out the Trustee’s responsibilities hereunder, the Trustee shall have all of the rights, protections and immunities which it possesses under the Indenture. The recitals contained herein and in the Notes, except the Trustee’s certificate of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Third Supplemental Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of the Notes or the proceeds thereof.

Section 2.04. Governing Law.

This Third Supplemental Indenture and the Notes shall be deemed to be a contract made under the internal laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State.

Section 2.05. Separability.

In case any provision in this Third Supplemental Indenture shall for any reason be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 2.06. Counterparts.

This Third Supplemental Indenture may be executed in any number of counterparts each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 2.07. No Benefit.

Nothing in this Third Supplemental Indenture, express or implied, shall give to any Person other than the parties hereto and their successors or assigns, and the holders of the Notes, any benefit or legal or equitable rights, remedy or claim under this Third Supplemental Indenture or the Base Indenture.

IN WITNESS WHEREOF, the parties hereto have caused this Third Supplemental Indenture to be duly executed all as of the day and year first above written.

**NETAPP, INC.**

By: /s/ Ronald J. Pasek

Name: Ronald J. Pasek

Title: Executive Vice President and  
Chief Financial Officer

*[Signature Page to Third Supplemental Indenture]*

IN WITNESS WHEREOF, the parties hereto have caused this Third Supplemental Indenture to be duly executed all as of the day and year first above written.

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

By: /s/ Paula M. Oswald

Name: Paula M. Oswald

Title: Vice President

*[Signature Page to Third Supplemental Indenture]*



**EXHIBIT A**  
**FORM OF 2.000% SENIOR NOTES DUE 2019**

*[Insert the Global Security legend, if applicable]*

**NETAPP, INC.**

**2.000% SENIOR NOTES DUE 2019**

No. [    ] \$[    ]  
CUSIP No. [        ]  
ISIN No. [        ]

NetApp, Inc., a Delaware corporation, for value received, promises to pay to [        ] or registered assigns, the principal sum of [        ] DOLLARS (\$[        ]) on September 27, 2019.

Interest Payment Dates: March 27 and September 27

Record Dates: March 12 and September 12

Each holder of this Security (as defined below), by accepting the same, agrees to and shall be bound by the provisions hereof and of the Indenture described herein, and authorizes and directs the Trustee described herein on such holder's behalf to be bound by such provisions. Each holder of this Security hereby waives all notice of the acceptance of the provisions contained herein and in the Indenture and waives reliance by such holder upon said provisions.

This Security shall not be entitled to any benefit under the Indenture, or be valid or become obligatory for any purpose, until the Certificate of Authentication hereon shall have been signed by or on behalf of the Trustee. The provisions of this Security are continued on the reverse side hereof, and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed in accordance with Section 2.04 of the Base Indenture.

NETAPP, INC.

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

**CERTIFICATE OF AUTHENTICATION**

This is one of the Notes of the series designated therein referred to in the within-mentioned Indenture.

Date: \_\_\_\_\_

U.S. Bank National Association,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

NETAPP, INC. 2.000% SENIOR NOTE DUE 2019

NetApp, Inc.

2.000% Senior Notes due 2019

This security is one of a duly authorized series of debt securities of NetApp, Inc., a Delaware corporation (the "Company"), issued or to be issued in one or more series under and pursuant to an Indenture for the Company's unsubordinated debt securities, dated as of December 12, 2012 (the "Base Indenture"), duly executed and delivered by and among the Company and U.S. Bank National Association (the "Trustee"), as supplemented by the Third Supplemental Indenture, dated as of September 29, 2017 (the "Third Supplemental Indenture"), by and between the Company and the Trustee. The Base Indenture as supplemented and amended by the Third Supplemental Indenture is referred to herein as the "Indenture." By the terms of the Base Indenture, the debt securities issuable thereunder are issuable in series that may vary as to amount, date of maturity, rate of interest and in other respects as provided in the Base Indenture. This security is one of the series designated on the face hereof (individually, a "Security," and collectively, the "Securities"), and reference is hereby made to the Indenture for a description of the rights, limitations of rights, obligations, duties and immunities of the Trustee, the Company and the holders of the Securities (the "Securityholders"). Capitalized terms used herein and not otherwise defined shall have the meanings given them in the Base Indenture or the Third Supplemental Indenture, as applicable.

1. **Interest.** The Company promises to pay interest on the principal amount of this Security at an annual rate of 2.000%. The Company will pay interest semi-annually on March 27 and September 27 of each year (each such day, an "Interest Payment Date"). If any Interest Payment Date, Optional Redemption Date or maturity date of this Security is not a Business Day, then payment of interest or principal (and premium, if any) shall be made on the next succeeding Business Day with the same force and effect as if made on the date such payment was due, and no interest shall accrue for the period after such date to the date of such payment on the next succeeding Business Day. Interest on the Securities will accrue from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid, from the date of issuance; provided that, if there is no existing Default in the payment of interest, and if this Security is authenticated between a regular record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; and provided, further, that the first Interest Payment Date shall be March 27, 2018. Interest will be calculated on the basis of a 360-day year of twelve 30-day months.
2. **Method of Payment.** The Company will pay interest on the Securities (except defaulted interest), if any, to the persons in whose name such Securities are registered at the close of business on the regular record date referred to on the facing page of this Security for such interest installment. In the event that the Securities or a portion thereof are called for redemption or there is a Change of

Control Offer, and the Optional Redemption Date or the Change of Control Payment Date, as applicable, is subsequent to a regular record date with respect to any Interest Payment Date and prior to such Interest Payment Date, interest on such Securities will instead be paid upon presentation and surrender of such Securities as provided in the Indenture. The principal of and the interest on the Securities shall be payable in the coin or currency of the United States of America that at the time is legal tender for public and private debt, at the office or agency of the Company maintained for that purpose in accordance with the Indenture.

3. Paying Agent and Registrar. Initially, U.S. Bank National Association, the Trustee, will act as paying agent and Security Registrar. The Company may change or appoint any paying agent or Security Registrar without notice to any Securityholder. The Company or any of its direct or indirect wholly-owned subsidiaries may act in any such capacity.
4. Indenture. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (“TIA”) as in effect on the date the Indenture is qualified. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and TIA for a statement of such terms. The Securities are unsecured general obligations of the Company and constitute the series designated on the face hereof as the “2.000% Senior Notes due 2019”, initially limited to \$400,000,000 in aggregate principal amount. The Company will furnish to any Securityholder upon written request and without charge a copy of the Base Indenture and the Third Supplemental Indenture. Requests may be made to: NetApp, Inc., 495 East Java Drive, Sunnyvale, California 94089, Attention: General Counsel.
5. Redemption. The Securities may be redeemed at the option of the Company prior to the maturity date, as provided in Section 1.03 of the Third Supplemental Indenture.

The Company shall not be required to make sinking fund payments with respect to the Securities.

6. Change of Control Repurchase Event. Upon the occurrence of a Change of Control Repurchase Event, unless the Company has exercised its right to redeem this Security or the Company has defeased this Security or satisfied and discharged this Security, the holder of this Security will have the right to require that the Company purchase all or a portion (such principal amount to be equal to \$2,000 or any integral multiple of \$1,000 in excess of \$2,000) of this Security at a purchase price equal to 101% of the principal amount repurchased plus accrued and unpaid interest, if any, on the amount to be repurchased to the date of purchase. Within 30 days following any Change of Control Repurchase Event, or, at the option of the Company, prior to any Change of Control but after the public announcement of the Change of Control, the Company shall send, by first class mail or electronic delivery, a notice to each Holder, in accordance with Section 1.04(a)(i) of the Third Supplemental Indenture, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer.

7. Denominations, Transfer, Exchange. The Securities are in registered form without coupons in the denominations of \$2,000 or any integral multiple of \$1,000 in excess thereof. The transfer of Securities may be registered and Securities may be exchanged as provided in the Indenture. No service charge will be made for any registration of transfer or exchange, but a Securityholder may be required to pay any applicable taxes or other governmental charges. If the Securities are to be redeemed, the Company will not be required to: (i) issue, register the transfer of, or exchange any Security during a period beginning at the opening of business 30 days before the day of mailing of a notice of redemption of less than all of the outstanding Securities of the same series and ending at the close of business on the day of such mailing; (ii) register the transfer of or exchange any Security of any series or portions thereof selected for redemption, in whole or in part, except the unredeemed portion of any such Security being redeemed in part; nor (iii) register the transfer of or exchange of a Security of any series between the applicable record date and the next succeeding Interest Payment Date.
8. Persons Deemed Owners. The registered Securityholder may be treated as its owner for all purposes.
9. Repayment to the Company. Any funds or Governmental Obligations deposited with any paying agent or the Trustee, or then held by the Company, in trust for payment of principal of, premium, if any, or interest on the Securities of a particular series that are not applied but remain unclaimed by the holders of such Securities for at least one year after the date upon which the principal of, premium, if any, or interest on such Securities shall have respectively become due and payable, shall, upon request of the Company, be repaid to the Company, or (if then held by the Company) shall be discharged from such trust. After return to the Company, Holders entitled to the money or securities must look to the Company, as applicable, for payment as unsecured general creditors.
10. Amendments, Supplements and Waivers. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of a majority in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

11. Defaults and Remedies. If an Event of Default with respect to the securities of a series issued pursuant to the Third Supplemental Indenture occurs and is continuing, the Trustee or the holders of at least 25% in aggregate principal amount of the Securities of such series then Outstanding, by notice in writing to the Company (and to the Trustee if notice is given by such holders), may declare the unpaid principal of, premium, if any, and accrued interest, if any, due and payable immediately. Subject to the terms of the Indenture, if an Event of Default under the Indenture shall occur and be continuing, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the holders, unless such holders have offered the Trustee indemnity satisfactory to it. Upon satisfaction of certain conditions set forth in the Indenture, the holders of a majority in principal amount of the Outstanding securities of a series issued pursuant to the Third Supplemental Indenture will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the securities of such series.
12. Trustee, Paying Agent and Security Registrar May Hold Securities. The Trustee, subject to certain limitations imposed by the TIA, or any paying agent or Security Registrar, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee, paying agent or Security Registrar.
13. No Recourse Against Others. No recourse under or upon any obligation, covenant or agreement of the Indenture, or of any Security, or for any claim based thereon or otherwise in respect hereof or thereof, shall be had against any incorporator, stockholder, officer or director, past, present or future as such, of the Company or of any predecessor or successor corporation, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that the Indenture and the obligations issued hereunder and thereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors as such, of the Company or of any predecessor or successor corporation, or any of them, because of the creation of the indebtedness authorized by the Indenture, or under or by reason of the obligations, covenants or agreements contained in the Indenture or in the Securities or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director as such, because of the creation of the indebtedness authorized by the Indenture, or under or by reason of the obligations, covenants or agreements contained in the Indenture or in the Securities or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the acceptance of the Securities.

14. Discharge of Indenture. The Indenture contains certain provisions pertaining to discharge and defeasance, which provisions shall for all purposes have the same effect as if set forth herein.
15. Authentication. This Security shall not be valid until the Trustee manually signs the certificate of authentication attached to the other side of this Security.
16. Abbreviations. Customary abbreviations may be used in the name of a Securityholder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).
17. Governing Law. The Base Indenture, the Third Supplemental Indenture and this Security shall be deemed to be a contract made under the internal laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State.



**ASSIGNMENT FORM**

To assign this Security, fill in the form below: (I) or (we) assign and transfer this Security to

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint

agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_

Your Signature:

\_\_\_\_\_  
(Sign exactly as your name appears on the face of this Security)

Signature Guarantee: \_\_\_\_\_

**OPTION OF HOLDER TO ELECT PURCHASE**

If you want to elect to have this Security purchased by the Company pursuant to Section 1.04(a) of the Third Supplemental Indenture, check the box:

Section 1.04(a) Change of Control Repurchase Event

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 1.04(a) of the Third Supplemental Indenture, state the amount: \$ \_\_\_\_\_.

Date: \_\_\_\_\_

Your Signature:  
(Sign exactly as your name appears on the other side of the Security)

Tax I.D. number

Signature Guarantee: \_\_\_\_\_  
(Signature must be guaranteed by a participant in a recognized signature guarantee medallion program)

**EXHIBIT B**  
**FORM OF 3.300% SENIOR NOTES DUE 2024**

*[Insert the Global Security legend, if applicable]*

**NETAPP, INC.**

**3.300% SENIOR NOTES DUE 2024**

No. [        ] \$[        ]  
CUSIP No. [        ]  
ISIN No. [        ]

NetApp, Inc., a Delaware corporation, for value received, promises to pay to [        ] or registered assigns, the principal sum of [        ] DOLLARS (\$[        ]) on September 29, 2024.

Interest Payment Dates: March 29 and September 29

Record Dates: March 14 and September 14

Each holder of this Security (as defined below), by accepting the same, agrees to and shall be bound by the provisions hereof and of the Indenture described herein, and authorizes and directs the Trustee described herein on such holder's behalf to be bound by such provisions. Each holder of this Security hereby waives all notice of the acceptance of the provisions contained herein and in the Indenture and waives reliance by such holder upon said provisions.

This Security shall not be entitled to any benefit under the Indenture, or be valid or become obligatory for any purpose, until the Certificate of Authentication hereon shall have been signed by or on behalf of the Trustee. The provisions of this Security are continued on the reverse side hereof, and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed in accordance with Section 2.04 of the Base Indenture.

NETAPP, INC.

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

B-2

**CERTIFICATE OF AUTHENTICATION**

This is one of the Notes of the series designated therein referred to in the within-mentioned Indenture.

Date: \_\_\_\_\_

U.S. Bank National Association,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

NETAPP, INC. 3.300% SENIOR NOTE DUE 2024

NetApp, Inc.

3.300% Senior Notes due 2024

This security is one of a duly authorized series of debt securities of NetApp, Inc., a Delaware corporation (the “Company”), issued or to be issued in one or more series under and pursuant to an Indenture for the Company’s unsubordinated debt securities, dated as of December 12, 2012 (the “Base Indenture”), duly executed and delivered by and among the Company and U.S. Bank National Association (the “Trustee”), as supplemented by the Third Supplemental Indenture, dated as of September 29, 2017 (the “Third Supplemental Indenture”), by and between the Company and the Trustee. The Base Indenture as supplemented and amended by the Third Supplemental Indenture is referred to herein as the “Indenture.” By the terms of the Base Indenture, the debt securities issuable thereunder are issuable in series that may vary as to amount, date of maturity, rate of interest and in other respects as provided in the Base Indenture. This security is one of the series designated on the face hereof (individually, a “Security,” and collectively, the “Securities”), and reference is hereby made to the Indenture for a description of the rights, limitations of rights, obligations, duties and immunities of the Trustee, the Company and the holders of the Securities (the “Securityholders”). Capitalized terms used herein and not otherwise defined shall have the meanings given them in the Base Indenture or the Third Supplemental Indenture, as applicable.

1. **Interest.** The Company promises to pay interest on the principal amount of this Security at an annual rate of 3.300%. The Company will pay interest semi-annually on March 29 and September 29 of each year (each such day, an “Interest Payment Date”). If any Interest Payment Date, Optional Redemption Date or maturity date of this Security is not a Business Day, then payment of interest or principal (and premium, if any) shall be made on the next succeeding Business Day with the same force and effect as if made on the date such payment was due, and no interest shall accrue for the period after such date to the date of such payment on the next succeeding Business Day. Interest on the Securities will accrue from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid, from the date of issuance; provided that, if there is no existing Default in the payment of interest, and if this Security is authenticated between a regular record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; and provided, further, that the first Interest Payment Date shall be March 29, 2018. Interest will be calculated on the basis of a 360-day year of twelve 30-day months.
2. **Method of Payment.** The Company will pay interest on the Securities (except defaulted interest), if any, to the persons in whose name such Securities are registered at the close of business on the regular record date referred to on the facing page of this Security for such interest installment. In the event that the Securities or a portion thereof are called for redemption or there is a Change of

Control Offer, and the Optional Redemption Date or the Change of Control Payment Date, as applicable, is subsequent to a regular record date with respect to any Interest Payment Date and prior to such Interest Payment Date, interest on such Securities will instead be paid upon presentation and surrender of such Securities as provided in the Indenture. The principal of and the interest on the Securities shall be payable in the coin or currency of the United States of America that at the time is legal tender for public and private debt, at the office or agency of the Company maintained for that purpose in accordance with the Indenture.

3. Paying Agent and Registrar. Initially, U.S. Bank National Association, the Trustee, will act as paying agent and Security Registrar. The Company may change or appoint any paying agent or Security Registrar without notice to any Securityholder. The Company or any of its direct or indirect wholly-owned subsidiaries may act in any such capacity.
4. Indenture. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (“TIA”) as in effect on the date the Indenture is qualified. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and TIA for a statement of such terms. The Securities are unsecured general obligations of the Company and constitute the series designated on the face hereof as the “3.300% Senior Notes due 2024”, initially limited to \$400,000,000 in aggregate principal amount. The Company will furnish to any Securityholder upon written request and without charge a copy of the Base Indenture and the Third Supplemental Indenture. Requests may be made to: NetApp, Inc., 495 East Java Drive, Sunnyvale, California 94089, Attention: General Counsel.
5. Redemption. The Securities may be redeemed at the option of the Company prior to the maturity date, as provided in Section 1.03 of the Third Supplemental Indenture.

The Company shall not be required to make sinking fund payments with respect to the Securities.

6. Change of Control Repurchase Event. Upon the occurrence of a Change of Control Repurchase Event, unless the Company has exercised its right to redeem this Security or the Company has defeased this Security or satisfied and discharged this Security, the holder of this Security will have the right to require that the Company purchase all or a portion (such principal amount to be equal to \$2,000 or any integral multiple of \$1,000 in excess of \$2,000) of this Security at a purchase price equal to 101% of the principal amount repurchased plus accrued and unpaid interest, if any, on the amount to be repurchased to the date of purchase. Within 30 days following any Change of Control Repurchase Event, or, at the option of the Company, prior to any Change of Control but after the public announcement of the Change of Control, the Company shall send, by first class mail or electronic delivery, a notice to each Holder, in accordance with Section 1.04(a)(i) of the Third Supplemental Indenture, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer.

7. Denominations, Transfer, Exchange. The Securities are in registered form without coupons in the denominations of \$2,000 or any integral multiple of \$1,000 in excess thereof. The transfer of Securities may be registered and Securities may be exchanged as provided in the Indenture. No service charge will be made for any registration of transfer or exchange, but a Securityholder may be required to pay any applicable taxes or other governmental charges. If the Securities are to be redeemed, the Company will not be required to: (i) issue, register the transfer of, or exchange any Security during a period beginning at the opening of business 30 days before the day of mailing of a notice of redemption of less than all of the outstanding Securities of the same series and ending at the close of business on the day of such mailing; (ii) register the transfer of or exchange any Security of any series or portions thereof selected for redemption, in whole or in part, except the unredeemed portion of any such Security being redeemed in part; nor (iii) register the transfer of or exchange of a Security of any series between the applicable record date and the next succeeding Interest Payment Date.
8. Persons Deemed Owners. The registered Securityholder may be treated as its owner for all purposes.
9. Repayment to the Company. Any funds or Governmental Obligations deposited with any paying agent or the Trustee, or then held by the Company, in trust for payment of principal of, premium, if any, or interest on the Securities of a particular series that are not applied but remain unclaimed by the holders of such Securities for at least one year after the date upon which the principal of, premium, if any, or interest on such Securities shall have respectively become due and payable, shall, upon request of the Company, be repaid to the Company, or (if then held by the Company) shall be discharged from such trust. After return to the Company, Holders entitled to the money or securities must look to the Company, as applicable, for payment as unsecured general creditors.
10. Amendments, Supplements and Waivers. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of a majority in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.



11. Defaults and Remedies. If an Event of Default with respect to the securities of a series issued pursuant to the Third Supplemental Indenture occurs and is continuing, the Trustee or the holders of at least 25% in aggregate principal amount of the Securities of such series then Outstanding, by notice in writing to the Company (and to the Trustee if notice is given by such holders), may declare the unpaid principal of, premium, if any, and accrued interest, if any, due and payable immediately. Subject to the terms of the Indenture, if an Event of Default under the Indenture shall occur and be continuing, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the holders, unless such holders have offered the Trustee indemnity satisfactory to it. Upon satisfaction of certain conditions set forth in the Indenture, the holders of a majority in principal amount of the Outstanding securities of a series issued pursuant to the Third Supplemental Indenture will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the securities of such series.
12. Trustee, Paying Agent and Security Registrar May Hold Securities. The Trustee, subject to certain limitations imposed by the TIA, or any paying agent or Security Registrar, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee, paying agent or Security Registrar.
13. No Recourse Against Others. No recourse under or upon any obligation, covenant or agreement of the Indenture, or of any Security, or for any claim based thereon or otherwise in respect hereof or thereof, shall be had against any incorporator, stockholder, officer or director, past, present or future as such, of the Company or of any predecessor or successor corporation, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that the Indenture and the obligations issued hereunder and thereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors as such, of the Company or of any predecessor or successor corporation, or any of them, because of the creation of the indebtedness authorized by the Indenture, or under or by reason of the obligations, covenants or agreements contained in the Indenture or in the Securities or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director as such, because of the creation of the indebtedness authorized by the Indenture, or under or by reason of the obligations, covenants or agreements contained in the Indenture or in the Securities or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the acceptance of the Securities.

14. Discharge of Indenture. The Indenture contains certain provisions pertaining to discharge and defeasance, which provisions shall for all purposes have the same effect as if set forth herein.
15. Authentication. This Security shall not be valid until the Trustee manually signs the certificate of authentication attached to the other side of this Security.
16. Abbreviations. Customary abbreviations may be used in the name of a Securityholder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).
17. Governing Law. The Base Indenture, the Third Supplemental Indenture and this Security shall be deemed to be a contract made under the internal laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State.

**ASSIGNMENT FORM**

To assign this Security, fill in the form below: (I) or (we) assign and transfer this Security to

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint

agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_

Your Signature:

(Sign exactly as your name appears on the face of this Security)

Signature Guarantee: \_\_\_\_\_

**OPTION OF HOLDER TO ELECT PURCHASE**

If you want to elect to have this Security purchased by the Company pursuant to Section 1.04(a) of the Third Supplemental Indenture, check the box:

Section 1.04(a) Change of Control Repurchase Event

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 1.04(a) of the Third Supplemental Indenture, state the amount: \$ \_\_\_\_\_ .

Date: \_\_\_\_\_

Your Signature:  
(Sign exactly as your name appears on the other side of the Security)

Tax I.D. number

Signature Guarantee: \_\_\_\_\_

(Signature must be guaranteed by a participant in a recognized signature guarantee medallion program)

September 29, 2017

NetApp, Inc.  
495 East Java Drive  
Sunnyvale, California 94089

**Re:** Netapp, Inc. – Issuance and sale of \$400,000,000 Aggregate Principal Amount of 2.000% Senior Notes due 2019 and \$400,000,000 Aggregate Principal Amount of 3.300% Senior Notes due 2024

Ladies and Gentlemen:

We have acted as special counsel to NetApp, Inc., a Delaware corporation (the “Company”), in connection with the filing by the Company with the Securities and Exchange Commission (the “Commission”) on December 2, 2015 of a registration statement on Form S-3 (the “Registration Statement”), under the Securities Act of 1933, as amended (the “Act”), that is automatically effective under the Act pursuant to Rule 462(e) promulgated thereunder. The Registration Statement relates to, among other things, the proposed issuance and sale, from time to time, by the Company of debt securities with an indeterminate amount as may at various times be issued at indeterminate prices, in reliance on Rule 456(b) and Rule 457(e) under the Act.

Under the Registration Statement, the Company has issued \$400,000,000 in aggregate principal amount of 2.000% Senior Notes due 2019 (the “2019 Notes”) and \$400,000,000 in aggregate principal amount of 3.300% Senior Notes due 2024 (the “2024 Notes” and together with the 2019 Notes, the “Notes”) pursuant to an Indenture, dated as of December 12, 2012 (the “Base Indenture”), between the Company and U.S. Bank National Association, as trustee (the “Trustee”), as supplemented by the Third Supplemental Indenture, dated as of September 29, 2017 (the “Third Supplemental Indenture,” and together with the Base Indenture, the “Indenture”), between the Company and the Trustee. The Notes were sold pursuant to an Underwriting Agreement, dated September 26, 2017 (the “Underwriting Agreement”), among the Company, J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC, as representatives of the several underwriters named in the Underwriting Agreement.

We have examined the Registration Statement, together with the exhibits thereto and the documents incorporated by reference therein; the base prospectus, dated December 2, 2015, together with the documents incorporated by reference therein, filed with the Registration Statement (the “Base Prospectus”); the preliminary prospectus supplement, dated September 26, 2017, in the form filed with the Commission pursuant to Rule 424(b) of the Securities Act relating to the offering of the Notes; the final prospectus supplement, dated September 26, 2017, in the form filed with Commission pursuant to Rule 424(b) of the Securities Act relating to the offering of the Notes (collectively with the Base Prospectus, the “Prospectus Supplement”); the Indenture and the Notes. In addition, we have examined such other instruments, documents, certificates and records which we have deemed relevant and necessary for the basis of our opinion hereinafter expressed. In such examination, we have assumed (i) the authenticity of original documents and the genuineness of all signatures; (ii) the conformity to the originals of all documents submitted to us as copies; (iii) the truth, accuracy, and completeness of the information, representations and warranties contained in the records, documents, instruments and certificates we have reviewed; (iv) the Underwriting Agreement has been duly authorized and validly executed and delivered by the parties thereto (other than the Company); (v) the legal capacity of all

natural persons; and (vi) that the Trustee has the power, corporate or other, to enter into and perform its obligations under the Indenture and that the Indenture will be a valid and binding obligation of the Trustee. As to any facts material to the opinions expressed herein that were not independently established or verified, we have relied upon oral or written statements and representations of officers and other representatives of the Company.

We express no opinion as to any matter relating to laws of any jurisdiction other than the federal laws of the United States of America, the General Corporation Law of the State of Delaware (the "DGCL") and the laws of the State of New York, as such are in effect on the date hereof, and we have made no inquiry into, and we express no opinion as to, the statutes, regulations, treaties, common laws or other laws of any other nation, state or jurisdiction.

We express no opinion as to (i) the effect of any bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, (ii) rights to indemnification and contribution which may be limited by applicable law or equitable principles, or (iii) the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, the effect of judicial discretion and the possible unavailability of specific performance, injunctive relief or other equitable relief, and limitations on rights of acceleration, whether considered in a proceeding in equity or at law.

On the basis of the foregoing and in reliance thereon and having regard for legal considerations which we deem relevant, and subject to the limitations and qualifications set forth herein, we advise you that in our opinion the Notes have been validly issued and constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, and the Notes are entitled to the benefits of the Indenture.

We hereby consent to the filing of this opinion as an exhibit to the above-referenced Registration Statement and to the use of our name wherever it appears in the Registration Statement, the Base Prospectus, the Prospectus Supplement, and in any amendment or supplement thereto. In giving such consent, we do not believe that we are "experts" within the meaning of such term as used in the Act or the rules and regulations of the Commission issued thereunder with respect to any part of the Registration Statement, including this opinion as an exhibit or otherwise.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

/s/ Wilson Sonsini Goodrich & Rosati, P.C.